

Independent Panel Review

into the proposed Dan Murphy's
development in Darwin

28 APRIL 2021

Disclaimer

This report was commissioned by **Woolworths Group** and prepared by the Independent Panel Review. This report reflects the views and findings of the Independent Panel and is not provided to Woolworths Group by way of legal advice and should not be construed as legal advice. All information in this report is derived from Independent Panel Review analysis using material requested and provided by Woolworths Group, proprietary research, publicly available data and from interviews with many stakeholders and other people concerned with the issue of the proposed Darwin Dan Murphy's development. Where information has been obtained from third-party sources this is clearly referenced in the footnotes. Due to rounding, numbers presented throughout this document may not add up precisely to the totals provided and percentages may not precisely reflect the absolute figures.

Australia's Aboriginal and Torres Strait Islander peoples have occupied Australia for 65,000 years and hold a foundational place in the Australian nation. They comprise about 30 per cent of the population of the Northern Territory. For many, English is their second or third language. First Nations peoples' unique cultures and their profound connections to Country remain vibrant and strong. These are matters of vital importance to First Nations peoples themselves and indeed to all Australians. Their value to our nation is inestimable and must be acknowledged, nourished and cherished.

But much has been taken from our First Nations citizens. Every institution and organisation in the Northern Territory should be concerned to ensure their future wellbeing as productive, healthy, respected and empowered citizens. A failure to do so will leave the Northern Territory incomplete with its core identity flawed and all Territorians will have been denied the rich and enduring rewards of an inclusive and confident society.

This is a call for the wholehearted recognition of the Northern Territory's First Nations peoples as the Traditional Owners of the lands, islands and seas of the Northern Territory. It is a call for the flourishing of their presence and unique cultures as fully embedded parts of the economic and societal functioning of the Northern Territory.

Acknowledgement of Country

The Independent Panel Review acknowledges the Traditional Custodians of Country throughout Australia and recognises their continuing connection to land, waters and community. We pay our respects to them and their cultures, and to Elders both past and present.

We particularly acknowledge the Larrakia and are honoured by the warmth with which we were received upon Larrakia lands. We also acknowledge the many First Nations Elders and leaders from communities and organisations across Australia who engaged in the Panel's consultation process.

We support the Uluru Statement from the Heart and the recognition of Aboriginal and Torres Strait Islander peoples in the Australian Constitution. We express our solidarity with Aboriginal and Torres Strait Islander peoples in their request for an Indigenous Voice to Parliament.

Aboriginal and Torres Strait Islander peoples should be aware that this publication may contain names of people who have since passed away.

All references to Indigenous people in this publication are intended to include Aboriginal and/or Torres Strait Islander peoples.

Letter of Transmittal

28 April 2021

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Dear Gordon

Dan Murphy's Darwin Development

Thank you for inviting me to establish and chair the Independent Panel Review into the proposed Dan Murphy's Darwin Development. I have pleasure in delivering the Panel's report to you.

The Panel recommends to your Board that the Woolworths Group not proceed with this proposal. Strong concerns about the proposal, expressed by the majority of people to whom the Panel spoke, most importantly but not only, Aboriginal and Torres Strait Islander peoples, and the negative impact on the Woolworths Group, its aspirations and reputation, form the overall basis for this recommendation.

I am pleased to be able to say that the Panel has engaged deeply with every aspect of our work. We have consulted a large number of stakeholders and other interested people. We have considered, at some length, issues of outstanding corporate citizenship generally, and in relation to Aboriginal and Torres Strait Islander peoples more particularly. Most importantly, we have considered the Dan Murphy's Darwin Development and its impact on the Woolworths Group. The Panel trusts that the report will assist the Woolworths' Board in its ongoing consideration of this complex issue.

The Panel also hopes that this report will be of assistance, not only to the Woolworths Group, but more generally, to large Australian organisations dealing with the issues considered in this report. If that is the case, then Woolworths Group will have made a contribution beyond this particular Dan Murphy's Darwin Development.

I want to thank the Woolworths Group personnel who spoke to the Panel for their open and ready willingness to engage with the Panel and provide us with all of the information we requested. I particularly want to thank Christian Bennett and Kate Eastoe for their terrific co-operation and assistance.

It has been a great pleasure to work with Panel members Nigel Browne, Heather D'Antoine, Roland Houareau and Neil Westbury. They have all made outstanding contributions. The Panel has been greatly assisted by Accenture and my team at Gilbert + Tobin. I thank them all.

Finally, I want to thank you and Brad Banducci. The decision to commission this Independent Panel Review was striking and speaks to the commitment you both have to the Woolworths Group to ensure its status as one of Australia's outstanding corporate citizens.

For my part, it has been a great privilege to lead this important work.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Danny Gilbert', written over a light blue horizontal line.

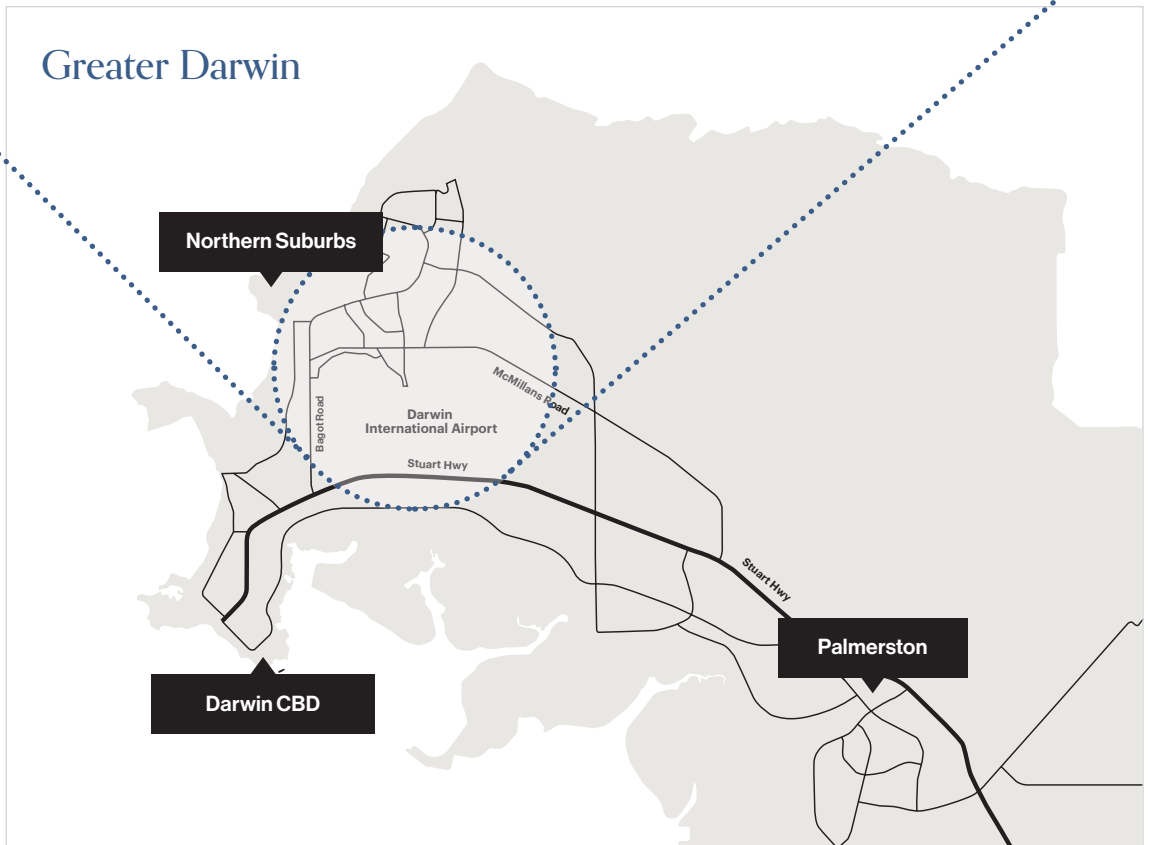
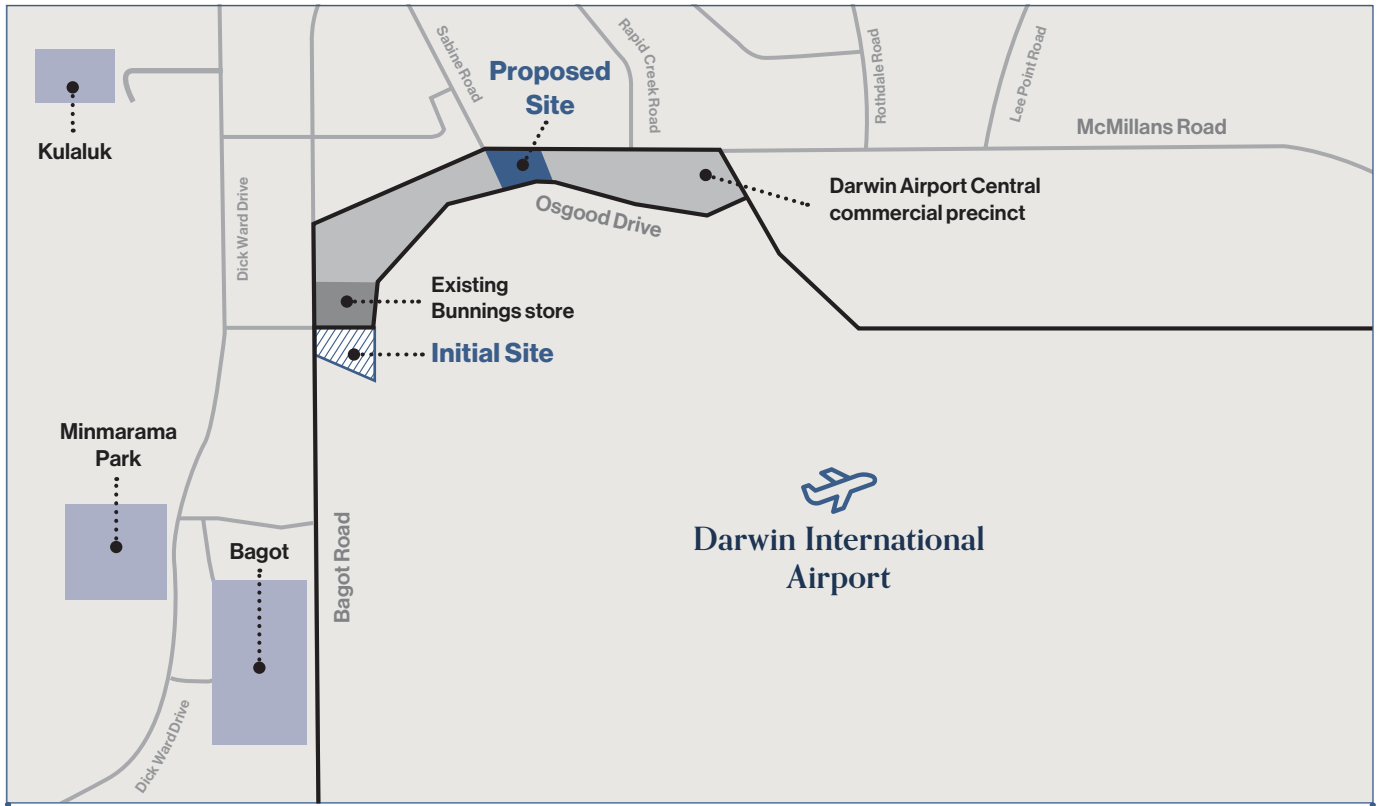
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SYDNEY | MELBOURNE | PERTH

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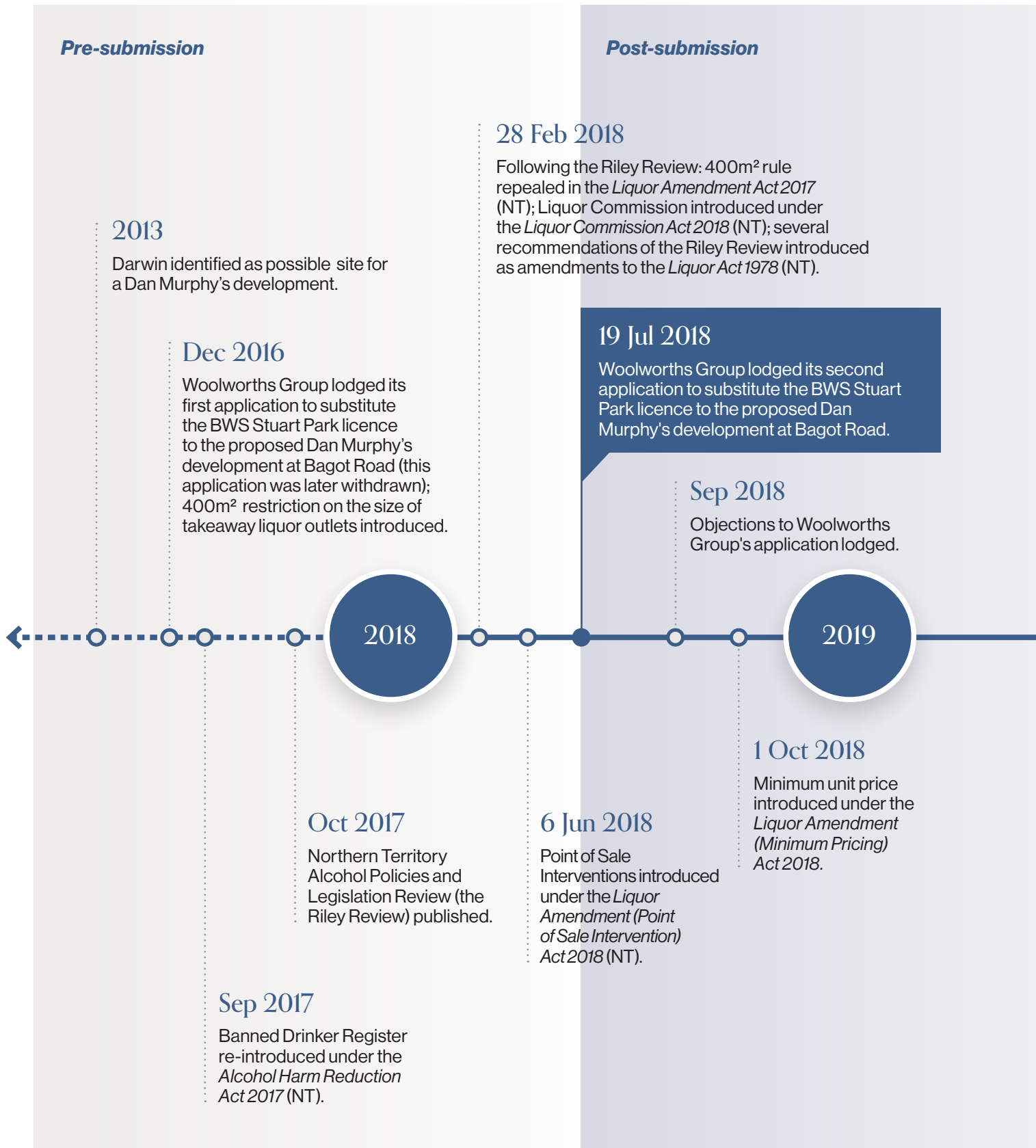
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Detailed view of proposed site



Note: Map is illustrative only and does not reflect exact scale.
 Source: Airport Development Group, 'Presentation to Independent Panel Review'; Northern Territory Government, 'NT Atlas and Spatial Data Directory'

High-level timeline of legislative amendments and decisions regarding the proposed Darwin Dan Murphy's development



Post-Liquor Commission decision

Post-approval

Oct 2019

70 recommendations of Riley Review introduced under the *Liquor Act 2019* (NT).

17 Dec 2020

The Director of Liquor Licensing approved Woolworths Group's application for the substitution of premises from BWS Stuart Park to a Dan Murphy's development at McMillans Road.

20 Sep 2019

Liquor Commission refused Woolworths Group's application.

7 Jan 2020

Woolworths filed an application to the Supreme Court of the Northern Territory seeking leave to appeal the NTCAT decision.

27 Mar 2020

Substitution of licensed premises provisions amended under the *Liquor Amendment Act 2020* (NT).

2020

2021

Jun 2019

Hearing of Woolworths Group's application before the Liquor Commission.

23 Dec 2019

NTCAT dismissed Woolworths Group's application to review the Liquor Commission decision.

Apr 2020

Woolworths Group lodged second application to NTCAT.

20 Nov 2020

The *Liquor Further Amendment Act 2020* (NT) commenced, allowing the Director of Liquor Licensing to determine Woolworths Group's application (and other historical applications) on an expedited basis at a new proposed location.

18 Apr 2019

Police powers regarding point of sale interventions expanded under the *Liquor Amendment Act 2019* (NT).

18 Oct 2019

Woolworths Group applied for NTCAT review.

Definitions

Term	Definition
Aboriginal and Torres Strait Islander or First Nations	This report refers to Australia's First Peoples as Aboriginal and Torres Strait Islander peoples or First Nations peoples. The Report refers to 'Indigenous' where required to ensure the integrity of external sources.
ABS	Australian Bureau of Statistics
Australian Hotels Association (NT Branch)	Now known as Hospitality NT
BMG	Bruce Mathieson Group
Bagot Road	Refers to original site at the corner of Bagot Road and Osgood Drive
Coles	Coles Group Limited
CPTED	Crime prevention through environmental design
Danila Dilba	Danila Dilba Health Service
Director	The Director of Liquor Licensing
Endeavour	Endeavour includes references to both Endeavour Drinks and Endeavour Group. Endeavour Group was created in February 2020 through the restructure and merger of the Endeavour Drinks and Hotels businesses.
ESG	Environmental, social and governance
FARE	Foundation for Alcohol Research and Education
FASD	Fetal Alcohol Spectrum Disorder
GDA	Gwalwa Daraniki Association (including Kulaluk and Minmarama Park)
GSP	Gross State Product

Term	Definition
Larrakia Nation	Larrakia Nation Aboriginal Corporation
Liquor Act 1978	<i>Liquor Act 1978</i> (NT)
Liquor Act 2019	<i>Liquor Act 2019</i> (NT)
NAIDOC	National Aborigines and Islanders Day Observance Committee
NIAA	National Indigenous Australians Agency
NRW	National Reconciliation Week
NTCAT	Northern Territory Civil and Administrative Appeals Tribunal
RAP	Reconciliation Action Plan
Riley Review	The Final Report of the Alcohol Policies and Legislation Review
RSA	Responsible service of alcohol
SEIFA	Socio-Economic Indexes for Areas
Stakeholders	References to stakeholders in this Report should be read as referring to the broader construction of stakeholders set out in Chapter 1.
Woolworths Group	Woolworths Group Limited
Yilli Housing	Yilli Rreung Housing Aboriginal Corporation

Executive Summary

Background on the Independent Panel Review

The Independent Panel Review was announced by Woolworths Group on 16 December 2020 to review the proposed Dan Murphy's Darwin development and provide a report to the Woolworths Group Board. Woolworths Group committed that no final decision about the future of the proposed development would be made until the Panel completed its assessment. Woolworths Group also committed to releasing the report in full.

The panellists are:

- Danny Gilbert AM (Chair), Co-founder and Managing Partner of Gilbert + Tobin;
- Heather D'Antoine, Honorary Fellow of Menzies School of Health Research;
- Neil Westbury PSM, former Commonwealth public servant and Director of the Indigenous Land Corporation;
- Nigel Browne, former Crown Prosecutor and current Chief Executive Officer of the Larrakia Development Corporation; and
- Roland Houareau, General Manager Northern Territory, INPEX Australia.

The terms of reference for this Independent Panel Review are as follows:

"Endeavour Group (Endeavour) is currently seeking a liquor licence to develop a Dan Murphy's retail outlet in Darwin (the 'Darwin Dan Murphy's development').

The IPR will provide to the Woolworths Group Board a report (the "Report") containing conclusions and other observations regarding the Darwin Dan Murphy's development.

Without limiting the generality of the above, the report will focus on the following areas:

- the adequacy and nature - including both breadth and depth - of Woolworths Group's stakeholder engagement relevant to the Darwin Dan Murphy's Development, including with respect to public health concerns;
- the extent to which stakeholder concerns are - and have been - factored into management and board decision-making regarding the Darwin Dan Murphy's Development; and

- best practice as it might apply to the supply and sale of alcohol as it impacts the lives and best interests of Aboriginal and Torres Strait Islander people, including - but not limited to - potential process changes and technology solutions."

The Panel undertook an extensive stakeholder consultation process in Darwin, Sydney and virtually. It met with Aboriginal and Torres Strait Islander leaders, business, health and education groups, community members and organisations from other sectors. It contacted 292 individuals and organisations, and all were given the opportunity to meet with the Panel. Of these, 160 met with the Panel in the more than 50 in-person meetings or provided a written submission.

In commissioning this Independent Panel Review, Woolworths Group has demonstrated a willingness to engage deeply in this issue. It gave the Panel open access to its Board and personnel at all levels of Woolworths Group and its subsidiary Endeavour. It also provided open and unrestricted access to its own documentation regarding the proposed Dan Murphy's Darwin development. The co-operation of the company and its representatives underlines Woolworths Group's commitment to be the leading alcohol retailer in the market. In this respect, commissioning and then considering the work of the Panel is part of Woolworths Group's ongoing and evolving consideration of the Darwin Dan Murphy's development.

Structure of the report

The 12 chapters of the report deal with the following topics:

- **Chapter 1** explores the 'shifting sands' of corporate purpose in Australia, questions of corporate legitimacy and trust, and ways in which companies should consider the relationship between principles and practice;
- **Chapter 2** considers Australia's commitment to and relationship with Aboriginal and Torres Strait Islander peoples, including the contemporary expectations of corporations and the role of the private sector in working with First Nations peoples to effect change;
- **Chapter 3** provides background details about the proposed development, Woolworths Group, Endeavour and Dan Murphy's;
- **Chapter 4** provides background on the Northern Territory and Darwin, with a focus on the economic, demographic and health factors concerning Aboriginal and Torres Strait Islander peoples and the communities surrounding the proposed development;

- **Chapter 5** explores the context of the consumption of alcohol in the Northern Territory and the incidence and severity of alcohol-related harms;
 - **Chapter 6** considers Endeavour's new store approval process, and the process it followed in choosing to establish a Dan Murphy's development in Darwin;
 - **Chapter 7** analyses the regulatory framework surrounding the proposed development, the licence application to the Northern Territory Liquor Commission, and applications for review to the Northern Territory Civil and Administrative Appeals Tribunal against the refusal of a licence as well as an appeal to the Supreme Court of the Northern Territory;
 - **Chapter 8** reviews Woolworths Group's engagement with the Northern Territory Government, amendments to the relevant liquor licensing laws, the quality of those amendments from a public policy perspective and the decision of the Director of Liquor Licensing of 17 December 2020;
 - **Chapter 9** reviews the nature and quality of the community consultation process undertaken by Woolworths Group and Endeavour;
 - **Chapter 10** reviews Woolworths Group's commitment to and relationship with Aboriginal and Torres Strait Islander peoples, and its ambitions to support the recognition and empowerment of First Nations peoples;
 - **Chapter 11** provides general observations from the Panel on the decision-making, governance and operational aspects of the proposed Dan Murphy's Darwin development; and
 - **Chapter 12** contains the findings and recommendations of the Panel's review of the proposed Dan Murphy's Darwin development.
- support legal, policy and regulatory steps in the public interest, considering reputational consequences; and
 - deliver on corporate purpose and the highest standards of social value and corporate sustainability.

The Panel does not wish this Report to be read as a blanket prohibition on the sale of alcohol in sensitive communities, be they First Nations communities or otherwise. It should be apparent from the entirety of this Report and, in particular the findings and recommendations, that great care is required to ensure that community safety and the overall consumption of alcohol in sensitive communities is dealt with in the best interests of those communities. Nevertheless, the Panel recognises that the negative impacts that arise from the over consumption of alcohol in the Northern Territory, laid out in detail in this report, are off the scale, not just by Australian, but by international standards. The resulting impacts in terms of human suffering and social and economic costs cut right across the Northern Territory community and are not confined to Aboriginal and Torres Strait Islander Territorians. They cannot be ignored.

Acknowledgements

The Panel wishes to thank the numerous stakeholders across Australia who generously gave their time to speak with the Panel and share their views on this important matter.

The Panel wishes to acknowledge and thank the Accenture team - Andrew Charlton, Amit Singh, Patrick Ingle, Kate Schofield, Jeevan Haikerwal, Rohan Badethalav and Sarah Fung and the Gilbert + Tobin team – Tristan Cutcliffe, Georgia Fennell, Jo Seto and Rebecca Shaw. Each of them has made very generous and important contributions to the Review and this report.

Findings and Recommendations

After considering the issues covered in detail in this report, the Panel makes nine key findings with relevant recommendations. Some of these recommendations overlap with others and the Panel notes that legitimacy and trust are pervasive themes across all nine key findings and recommendations. The findings and recommendations for the Woolworths Group's consideration seek to:

- strengthen community investment and reconciliation;
- enhance engagement and consultation;
- improve operational decision-making;
- address harms beyond sale and service;
- deepen consideration of the impacts of alcohol in the community;
- advance best practice governance and risk systems;
- reinforce and monitor commitments to responsible service measures;

1

The Shifting Sands of Corporate Purpose

Citizenship, Reputation, Legitimacy and Trust

In creating value for society, corporate purpose has transcended its historical use as a ‘tick-the-box’ citizenship tool. Corporate purpose is fast transitioning to the clearly articulated reason for a corporation to exist. But to demonstrate a strong sense of corporate purpose, corporations must first establish legitimacy and trust by demonstrating their capabilities and character to their stakeholders. The range of stakeholders has grown substantially over time to now include consumer groups, peak bodies, suppliers, and importantly, in this context, vulnerable communities. To meet the needs of these diverse groups, corporations must take a balanced approach that goes beyond legal and regulatory compliance. Today, corporations must integrate social value and corporate purpose into principles and practices.

The Panel has included this chapter as an important framework for the consideration of the proposed Dan Murphy’s Darwin development, as it sets the tone for the standards required to meet today’s elevated responsibilities for corporations. Whether Woolworths Group, in this matter, has met the aspirations and standards discussed in this chapter requires an understanding of how it translated purpose into principles and practice. To deliver on social value as discussed below, Woolworths Group would need to have accepted its elevated set of responsibilities given the health, social and community context.

1.1 Establishing legitimacy and building trust

The concept of legitimacy

For the last two decades, trust has been touted as a powerful lubricant that spins the economic wheels for society's collective benefit.¹ But before addressing the issue of trust, it is fundamentally important to recognise the "little understood" concept of legitimacy, as Simon Longstaff and Victoria Whitaker have said.²

Legitimacy is the prerequisite of a business' social value. It has been defined as a perception that the actions of an entity are desirable, proper or appropriate within some socially constructed system of norms, values, beliefs and definitions.³ Corporate legitimacy is the right to perform a function in society that is recognised and valued. Social value frames the relationship between business and society as one in which corporations are an integral part of society.

Corporate trust is gained by performing that societal function in a way that aligns with its articulated objectives and obligations. An erosion of corporate trust can be ameliorated and this trust is particularly important where there is diminished or low legitimacy. Erosion of corporate legitimacy cannot be easily compensated or ameliorated.

A corporation's legitimacy is intrinsically connected to its capacity to operationalise its ethical purpose, values and principles.⁴ Legitimacy operates along a diminishing spectrum depending on the actual or perceived impacts or harms that corporate actions cause for stakeholders. Where these impacts are material and ongoing, the threshold for achieving legitimacy is higher and the degree of responsibility on corporations is more significant.

In the first instance, corporations need to be aware of their essential legitimacy. This requires a greater investment in their engagement and understanding of stakeholders, their expectations and needs, and ultimately accepting an elevated set of responsibilities that are tied to the societies in which they operate. For example, a mining corporation may bear elevated responsibilities for land disturbances. Or as in this report, these responsibilities may concern alcohol and its well documented health and social impacts on the community as a whole.

The importance of trust

While legitimacy underpins a corporation's social value, trust is the necessary condition for retaining or expanding that social value. Trust is becoming increasingly important as respect for traditional institutions plummets and conventional hierarchical structures become less relevant.

In the past, power was distributed through a top-down approach. Today, power is distributed through a flatter, network effect. Those who wield power may reside anywhere in the network. This has had a direct impact on decision-making, encouraging a bottom-up, two-way flow of engagement. In this much more collaborative environment, leaders become the power brokers rather than governing bodies in a hierarchy. This shift is heralding a new world of participation, which is replacing the one-way flow that once dominated decision making. At the same time, and for the first time, an ever-widening group of stakeholders now has the tools and confidence to broadcast a company's actions to the world, for better or for worse.

So how do corporations foster the trust they need to operate in this environment? Practitioners such as Rupert Younger and David Waller of the University of Oxford's Centre for Corporate Reputation⁵ and the Saïd Business School's Rachel Botsman have offered a distinction between two types of trust. While the first type of trust refers to an organisation's competence to perform a specific task, the second refers to its moral or social qualities. Reputations built upon capability are more enduring and take a long time to wash away. Reputations built on character can be transient, especially in a world where social media can instantly detonate bad news. Both capability and character are essential forms of trust.

Woolworths Group has demonstrated its capability over almost a century, particularly in its supermarkets business, while showing its character through numerous community initiatives prior to and during the COVID-19 crisis. Indeed at the annual dinner of the Business Council of Australia on 19 April 2021, when the BCA's "Biggies" awards were announced, Woolworths Group was awarded the Peoples' Choice Big Impact Award, recognising the company's contribution to Australian communities throughout 2020, including both the COVID-19 pandemic and bushfires.

1 Roderick Kramer (2009), 'Rethinking Trust', *Harvard Business Review*

2 Simon Longstaff and Victoria Whitaker (2018), 'Trust, Legitimacy & the Ethical Foundations of the Market Economy'





3 Mark Suchman (1995), 'Managing Legitimacy: Strategic and Institutional Approaches', *The Academy of Management Review*

4 Simon Longstaff and Victoria Whitaker (2018), 'Trust, Legitimacy & the Ethical Foundations of the Market Economy'

5 Rupert Younger and David Waller (2017), 'The Reputation Game', *Oxford University Press*; Rachel Botsman (2018), 'The Trust Deficit'

Exhibit 1:

The two types of trust

1 Capability		Competence	Demonstrating a capacity to deliver against commitments
		Reliability	Consistently delivering to a standard and building reliance
2 Character		Integrity	Acting ethically, and operating with probity and fairness
		Compassion	Protecting the most vulnerable people and delivering for others

Source: Adapted from Rupert Younger and David Waller (2017); Rachel Botsman (2018)

In spite of the trust people have in Woolworths Group's competence and character, Woolworths Group faces a Change.org petition started in May 2020 by Blak Business with over 150,000 signatures against the Darwin Dan Murphy's development.⁶

To meet stakeholder expectations and address the erosion of trust, corporations have typically concentrated efforts on transparent and accountable practices. But this may not be enough and requires an assessment of four broader concepts:

- what it means to be a stakeholder;
- how to balance the needs of stakeholders;
- the differing levels of corporate social responsibility; and
- what it means to be a substantiated and leading corporate citizen.

1.2 From shareholders to stakeholders

In Australia, the notion of corporate purpose has traditionally centred on the idea that the fundamental reason a corporation exists is to create economic value. Seen this way, a corporation's directors are required to do no more than pursue this goal in good faith and in the best interests of the corporation. Milton Friedman has been highly influential in articulating the concept.

“There is one and only one social responsibility of business - to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud.”

- Milton Friedman, Nobel Prize Winning Economist (1962)

This framework came to be known as “shareholder primacy”. While the purpose of the corporation remains the generation of economic value, shareholder primacy in and of itself, is under challenge from a wider set of stakeholders. Those stakeholders manifest broad and diverse societal expectations. The result is that social and economic value are increasingly interconnected and corporations must now consider accountability to these stakeholders.

In the United States in August 2019, the Business Roundtable—representing over 180 of the country's largest companies—issued a ‘Statement on the Purpose of a Corporation’ avowing “a fundamental commitment to all of our stakeholders”, including customers, employees, suppliers, communities, and shareholders.⁷ The stakeholder-centric approach has gained far more traction in Europe, where the European Commission has made it central to the 2021 Sustainable Corporate Governance Initiative, and where a radical new corporate governance regime is being mooted.

⁶ Change.org petition (ongoing), ‘Keep grog out of our communities’

⁷ Business Roundtable (2020), ‘Statement on the Purpose of a Corporation’

Environmental, social and governance (ESG) fund investors are bolstering the stakeholder-centric approach by demanding that corporations deliver both positive action and no negative action. The last quarter of 2020 alone saw US \$120.8 billion flow into sustainable funds in Europe – 80 per cent of the global

total of sustainable funds – and US \$20.5 billion into the United States.⁸ One of the primary reasons for this trend is greater shareholder activism, with ESG increasingly becoming a focus for intervention. The total proportion of shareholder resolutions that focus on environmental and social issues now stands at over 50 per cent.⁹

The importance of the stakeholder

While the tension between shareholder primacy and broader stakeholder governance continues to be debated, it is vastly overstated. Weaving stakeholder governance into a broader, more sophisticated pursuit of shareholder value is entirely consistent with directors' duty to act in the best interests of the company. As the CEO of the world's largest asset manager, BlackRock, Larry Fink recently wrote:¹⁰

“Companies ignore stakeholders at their peril... the more [a] company can show its purpose in delivering value to its customers, its employees, and its communities, the better able [it] will be to compete and deliver long-term, durable profits for shareholders.”

- Larry Fink, CEO, BlackRock (2021)

Closer to home, Michael Chaney AO, the Chairman of Wesfarmers, said in his address to shareholders at the 2020 Wesfarmers Annual General Meeting:

“We have never been backward about stating that our single purpose as a company is to provide satisfactory returns to you, our shareholders. The reason you own shares in Wesfarmers, rather than another company is that you hope that we'll give you better returns over the long term; but we have always been at pains to state that the only way we can achieve financial success over the long term is if we look after the interests of all stakeholders: employees, customers, suppliers and the communities in which we operate – and if we act ethically and sustainably.”

- Michael Chaney AO, Chairman, Wesfarmers (12 November 2020)

Many stakeholders are understandably self-interested, but they also demand the consideration of broader community impacts and the creation of social value. The relevance and significance of this wider set of stakeholders is highly contextual and variable. Identifying, understanding, weighing up and determining their legitimate interests and influence is difficult. Of course, not all of these diverse interests can or should be satisfied. The task is made more difficult by social media and community activism, not to mention regulatory and political interventions. Nonetheless, chief executives and boards cannot, today, absolve themselves of the serious challenge of trying to deliver meaningful and authentic engagement with the interests and expectations of all relevant stakeholders.

To better balance the needs of these stakeholders, corporations should devise a framework that synthesises the most relevant features of two approaches:

- The **inside-out approach**, in which corporations achieve favourable outcomes by building responsible business activities in a framework where decision-making lies within the organisation, and communication with stakeholders involves discussions of policies to be delivered or implemented. This requires a mapping of the stakeholder landscape to understand networks of influence and engaging with stakeholders in response to possible unfavourable policies and outcomes.¹¹ To ensure strategic reasonableness

8 Reuters (2020), 'Sustainable fund assets hit record \$1.7trn in 2020'. Note that this figure includes funds that have been liquidated but does not include funds of funds. Sector funds are defined in the Sustainable Funds Landscape Reports

9 Robert Eccles and Svetlana Klimenko (2019), 'The Investor Revolution', *Harvard Business Review*

10 Larry Fink (2021), 'Larry Fink's 2021 letter to CEOs'

11 James Brusseau (2012), 'Three theories of corporate social responsibility', *Business Ethics*, Section 13.2

Exhibit 2:

Key stakeholder groups and their relevant expectations

Key Stakeholders	Expectations
 Shareholders & institutional investors	Corporate value creation, increase in investor wealth, social and environmental impact
 Employees	Good working conditions, opportunities for advancement, fair pay, protections, diversity and inclusion, benefits, do no harm
 Suppliers	Transparency, prompt and efficient invoicing payments, flexible arrangements, regular review and update of terms
 Customers	Quality products, ethically sourced products, efficient customer service, do no harm
 Governments & regulators	Compliance, fair competition, policy development, nation building
 Communities	Charity, local jobs and investments, supporting the most vulnerable members in this context by demonstrating respect for and recognition of cultures, heritages and rights, establishing trust
 Consumer groups & industry bodies	Consumer advocacy and social value beyond legislated minimum, industry development, fair competition, local investments

Note: The list of stakeholders and expectations is not exhaustive, but seeks to illustrate the range of interests held.
Source: Panel analysis (2021)

and durability, priority stakeholder concerns should then be woven into broader business strategy, which would also blunt any charge that stakeholder and shareholder pursuits are opposed.

- The **outside-in approach**, in which corporations pay substantial attention to and engage with stakeholders such that the decision-making process is negotiated, and goals are developed so that stakeholders are actors together with the corporation.¹² This requires tracking of quality of relationships with relevant stakeholders, engaging regularly to understand concerns and developing solutions in coordination with them. To ensure efficiency and accountability,

relevant stakeholder priorities should be identified with sufficient precision to disaggregate analysis by type, time horizon (short, medium or long), and priority (materiality, relevancy or opportunity).

The inside-out approach and the outside-in approach are not mutually exclusive. If a corporation only pursues the inside-out approach, it may achieve the desired financial outcome, but may not create the required social value. On the other hand, if a corporation only pursues the outside-in approach, it may well put financial and economic value creation at risk.

12 James Brusseau (2012), 'Three theories of corporate social responsibility', Business Ethics, Section 13.2

Clearly then, the key factor in developing the ideal approach is the extent to which a corporation engages meaningfully with its stakeholders and demonstrates a capacity to consider and determine the relevance of their demands. As corporations direct thinking beyond stakeholder identification to reconciling stakeholder aspirations and concerns with their own corporate purpose, they need to place this in the context of their existing social standing and the extent to which they are positioned on wider ESG matters.

1.3 Leading corporate citizenship in the twenty-first century

It has become evident that the range of issues informing and impacting sustainable economic value have shifted beyond a narrowly defined short-term pursuit of profit to include moral obligations and social responsibilities.

In Friedman's thinking, it was the role of democratically elected governments to frame and enforce 'rules of the game' that satisfied the multiplicity of stakeholder interests. But governments are simply not capable of safeguarding the interests of all stakeholders and, indeed, they cannot be expected or necessarily trusted to do so.

Consequently, stakeholders are insisting that, in relation to relevant corporate activity, their interests be attended to by those responsible for the governance of the corporation. They simply do not accept that directors and senior company executives should be able to use the concept of shareholder primacy as a defence against allegations of poor ethical, social or environmental outcomes. Those who want to insist on shareholder primacy over and above other stakeholder interests, are finding themselves in an increasingly invidious position. There is now ample evidence that a corporation's stakeholders are highly influential in determining not only shareholder value in the longer-term but senior management and board survival in the short-term.

One eminent person, with a long history in the Northern Territory, whom the Panel consulted said that governments are at times inhibited in their ability to drive social progress by the structure of the democratic institutions and representative bodies. Therefore, companies have the opportunity to offer leadership on issues such as disadvantage over and above the election cycle. This person was particularly critical of the failure of the major alcohol companies operating in the Northern Territory to meaningfully assist successive Northern Territory governments in the struggle to cope with excessive alcohol consumption and its effects.

In other words, corporations with significant and ever-expanding footprints such as Woolworths Group, which mirror society in its reach and embeddedness, should also begin to reflect this elevated role as responsible actors in delivering on and furthering the public interest.

A role in nationhood

In the long run, all successful corporations have a vital interest in ensuring that they operate in a fair and just society where effective governments are valued partners in sustaining both the free market and a free society.¹³

Business plays a role in building strong and healthy communities and in turn a strong and thriving nation – in short, a role in nationhood itself. Importantly, this is also the expectation that most governments have of business. That said, governments have obviously vital roles to play, and corporations and their boards cannot and should not take on responsibilities that are manifestly the province of government.

A challenge for companies is how they articulate their social responsibilities and accountabilities in the construct of the public interest, where the public interest cannot be left to the prevailing policy or legal settings of the day. In this context, there are differentiated and escalating levels of maturity in corporate social responsibility.

There are three levels of corporate social responsibility initiatives and engagement that companies may consider. The first level, "embarking", sees a corporation establish initiatives that have traditionally been seen as 'good enough'. In other words, complying with regulations and laws. Typical activities include a focus on safety, acting fairly with customers, employees, and suppliers, and providing a working environment that fosters positive employee sentiment.

The second level, "emerging", sees a corporation make ethical and responsible considerations across its operations but not to the extent that these considerations are entrenched in its core business. This may include emissions reduction, donating financial or human capital, funding a corporate social responsibility program and running a small number of community programs.

The highest level, "empowering", sees a corporation comprehensively embed ESG initiatives into its core business. Typical actions include tying social value and purpose to how individuals are incentivised, evaluated, and remunerated, using corporate voice to

¹³ Rebecca Henderson (2020), 'Reimagining Capitalism in a World on Fire', Harvard University Press

Exhibit 3:

Levels of corporate purpose



Source: Accenture (2021)

influence positive change and becoming a thought-leader within the broader sector, contributing to the development of community-wide programs that support vulnerable groups, and supporting customers, employees and suppliers to implement ESG initiatives.

The clearest implication of this responsibility framework is that the emphasis on mere compliance with the law can potentially overlook considerations about consistency with social purpose and value, and ultimately undermine the overall pursuit of economic value. Compliance on its own, in environments with incrementally more onerous needs and requirements, can create the self-belief that good corporate processes and considerations are inclusive and extensive, but crowd out a wider assessment of risk or understanding of social expectations and value.

Woolworths Group itself has a clearly articulated purpose: “We create better experiences together for a better tomorrow”.¹⁴ Woolworths Group’s social purpose has evolved over the period covered by this report and extends to its customers, employees and the communities it serves. A discussion on whether Woolworths Group adhered to its social purpose and value in relation to the proposed Dan Murphy’s development is discussed elsewhere in the report.

1.4 Driving accountability through principles and practices

Social responsibility is a complex concept. It is not easily understood, nor is it easy to embed principles through a large corporation. But corporations can aid this process by clearly articulating a purpose that could be understood at all levels of the organisation.

Purpose articulates why an organisation exists and describes the social issues it seeks to solve. Leading corporations today understand that they should be clear about why they exist and how they intend to advance the interests of their stakeholders and the communities which they serve. An organisation’s commitment to a purpose and a positive social impact is becoming increasingly central to its good management and its ability to create shareholder value.¹⁵ Many large and well-known Australian public corporations have adopted the language of sustainability and purpose to help drive and inform their activities. This helps them act with ethical and moral intentions and build strong reputations as corporate citizens.

¹⁴ Woolworths Group, ‘Our purpose & key priorities’, accessed 14 March 2021

¹⁵ Research by Harvard Business School academic George Serafeim has shown that companies seriously committed to a purpose outperform their peers. In developing the curriculum for the Harvard MBA course ‘Creating Shared Value: Competitive Advantage through Social Impact’, Michael Porter and Mark Kramer found more and more examples of companies gaining a competitive advantage by delivering a positive social impact. Each year, *Fortune magazine* publishes a list of 50 companies changing the world – that is, firms that have a meaningful impact on social issues in a way that is tightly connected to their business – and the companies on those lists, on average, have outperformed the market.

Dr Ken Henry AC, with significant executive leadership with both government and in the private sector, and the former Chair of the Sir Roland Wilson Foundation at the Australian National University told the Panel:

“Business leaders could embrace a clearly articulated social purpose beyond profit. They could start by articulating a clear statement of their business’ reason for existence; the impact they intend to have on peoples’ lives; and how, through the agency of both their workplace and their customers, their business seeks to contribute to customer and employee wellbeing, the building of strong communities and a fair and vibrant nation. To put this another way, leaders could assume accountability for all of the consequences of their business.”

- Dr Ken Henry AC, former Chair, Sir Roland Wilson Foundation – Australian National University (2021)

A business-aligned purpose which stands for something meaningful is essential. Adopting this broader approach to both purpose and stakeholder management changes how leading corporations think about citizenship and social responsibility.¹⁶

There is no definitive prescription or best practice here, but leading corporate citizens must have four key attributes: a sustainability strategy and framework; a demonstrable roadmap to deliver on commitments; strong collaboration and consultation; and comprehensive stakeholder engagement.¹⁷ Together, these elements support the development and implementation of a business-aligned purpose.

While the purpose of social value is clear, it is important to establish the principles and practices for how it manifests and how a corporation builds, throughout its operations, awareness of and compliance with this value throughout its operations. This is imperative in establishing credibility as a socially responsible business.

Without committing to incorporate its declared social purpose into its decision-making and activities, a corporation runs the risk that the support it delivers in a community will be viewed as merely philanthropic or worse, unsubstantiated.

Exhibit 4:

Attributes of leading corporate citizens in development and implementing purpose



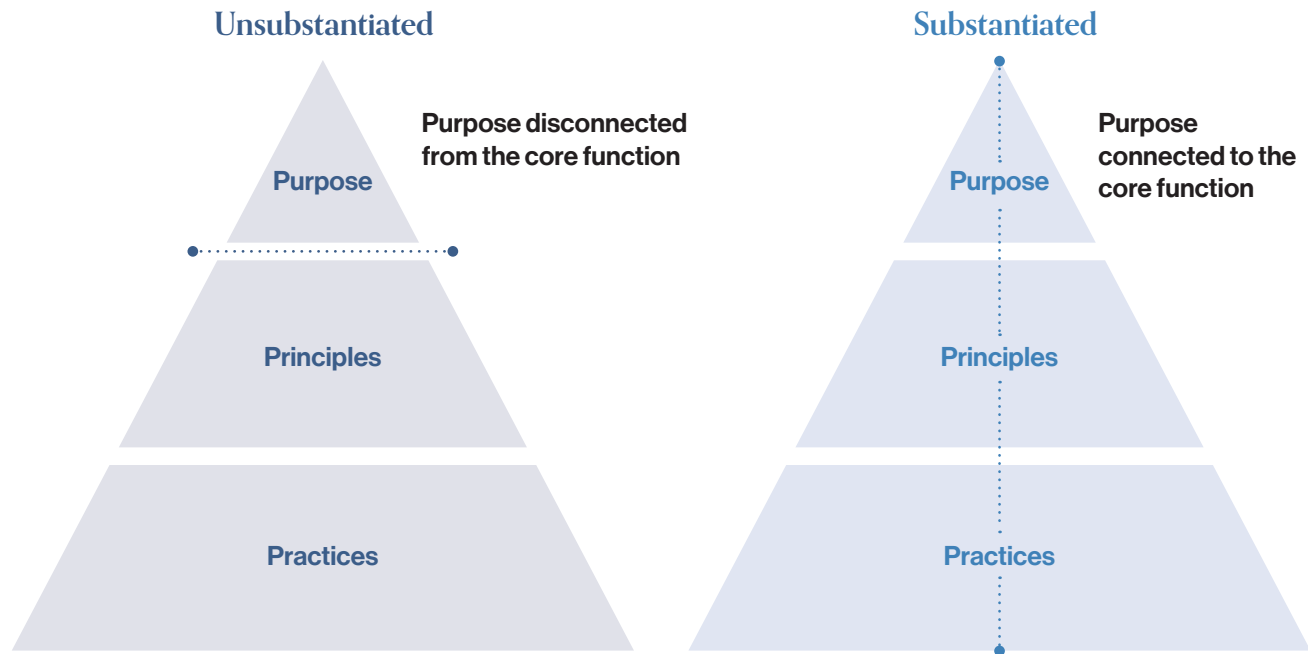
Source: Adapted from the Test of Corporate Purpose Initiative and KKS Advisors (2020)

16 In general, by way of analogy to the twin of responsible business, sustainability, there are five standards shaping the array of emerging sustainability risks and expectations: UN Guiding Principles on Business and Human Rights, OECD Guidelines for Multinational Enterprises, Sustainable Accounting Standards Board, Taskforce on Climate-related Financial Disclosure, and the Sustainable Development Goals.

17 A recent Ford Foundation-funded study found that being a Business Roundtable signatory had a negative effect on a company’s management of COVID-19-related issues and a minimally positive effect on its management of inequality-related matters. See KKS Advisors (September 2020), ‘COVID-19 and Inequality: A Test of Corporate Purpose’

Exhibit 5:

Substantiated versus unsubstantiated corporate purpose



Source: Panel analysis (2021)

Social value is a mirror image of company culture and values, and it forms the basis of corporate identity. This identity reflects what a company really is, rather than what it says it is. Woolworths Group has set itself the task of being an outstanding corporation, one that is concerned with the impact it has on people's lives, acts in the best interest of the Australian community and, through its operations, contributes to the foundations of a just and equitable society.

The Panel has come to the view that in relation to the Dan Murphy's Darwin proposal, Woolworths Group has not met all of the aspirations and standards discussed in this chapter.

2

Corporate Australia's Commitment to and Relationship with Aboriginal and Torres Strait Islander Australians

Australia's Aboriginal and Torres Strait Islander peoples have faced, and continue to face disempowerment, trauma and disadvantage. Significant efforts are required at all levels of Australian society to support Aboriginal and Torres Strait Islander Australians in closing the gap on disadvantage. Corporations like Woolworths Group have a substantial role to play in this. However, it is important that corporations do not fall into the trap of defining Aboriginal and Torres Strait Islander peoples solely in terms of that disadvantage, noting also the key human rights tenet that all people are fundamentally equal. And corporations must also celebrate Aboriginal and Torres Strait Islander peoples' resilience, ongoing strengths, capacity and capabilities as well as the very large contributions already made to Australian life. Over the last 15 years, one way this has been captured is in Reconciliation Action Plans. These have provided a framework to foster respect, equality, equity and unity for Aboriginal and Torres Strait Islander peoples. To this day however, corporations stray from stated commitments and aspirations in these Reconciliation Action Plans. Many do not have the structures and necessary processes embedded in organisational culture to ensure those aspirations are met. This is once again an important framework in assessing Woolworths Group's proposed Dan Murphy's Darwin development.

2.1 Histories of Aboriginal and Torres Strait Islander peoples

In assessing how to deliver on their elevated responsibilities, corporations must explore ways of embedding the needs and concerns of various stakeholder groups into their commercial and operational decision-making. The Panel notes the extent of these responsibilities elsewhere in this report. The necessity to oversee and drive implementation is heightened by the degree of legitimacy and contemporary trust companies may be seen to hold in local communities. In addition, the degree of extended responsibility is a function of the level of disadvantage experienced by stakeholder groups, both historically and in the context of a corporation's core business.

No one stakeholder group in Australian history has, or continues to experience, more disadvantage or more trauma than Australia's First Peoples, whose ways of being and engagement with Country has seen them survive and thrive on the Australian continent for 65,000 years. Commencing 251 years ago, Aboriginal and Torres Strait Islander Australians were denied their cultures, robbed of their freedoms, robbed of their lands, their livelihoods and in many cases their lives. These injustices were left to fester deep into the twentieth century. But from the start, Aboriginal and Torres Strait Islander Australians sought to retain

their cultures, their languages, their dignity and their connections to Country. Importantly, First Nations peoples continued to define themselves not against the standards and values of the mainstream but in accordance with their own traditional cultures and laws.



Aboriginal and Torres Strait Islander Australians have long fought to be empowered to take control of their lives. They are rightly demanding to be heard. Australians should recognise their special place in Australian nationhood, their history and their cultures. Australians need to understand that First Nations peoples carry the trauma of almost 240 years of post-colonial engagement with settler communities across the length and breadth of Australia – their country.

While most Australians now acknowledge the gross crimes committed against Australia's First peoples, the proper recognition of their history, cultures, rights and experiences has not yet occurred. If Australia is to establish the conditions and structures for Aboriginal and Torres Strait Islander Australians to fully participate in the social and economic life of the nation, then significant efforts are required at all levels of the Australian community. This includes corporations, especially those who through their footprints mirror and reflect Australian society.

The latest *Closing the Gap* report details Australia's efforts to achieve a measure of equality and empowerment for Aboriginal and Torres Strait

Exhibit 6:

Australia's progress against Closing the Gap targets

Indicator	Target	Progress rating	
Child mortality	2018		 No progress made
Early childhood education	2025		 On track to achieve
School attendance	2018		
Literacy and numeracy	2018		 Some progress made
Year 12 or equivalent	2020		
Employment	2018		
Life expectancy	2031		

Source: National Indigenous Australians Agency (2020)

Islander Australians and minimise disadvantage. The results of these efforts have been mixed over the last decade and it is commonly understood that the statistics are much worse for remote communities.

Australia is on track to reach its early childhood education target of 95 per cent enrolment among four-year-old Aboriginal and Torres Strait Islander children. The nation is also on track to halve the gap between Aboriginal and Torres Strait Islander and non-Indigenous students in Year 12 attainment. But little to no progress has been made in other areas, such as literacy and numeracy, school attendance and child mortality rates. On this, Prime Minister Scott Morrison said:¹⁸

“These results are not what we had hoped for, and it’s important to acknowledge them. But it’s also important to celebrate the stories and successes that lie beyond the targets. On almost every measure, there has been progress... It’s clear we have more to do, but we must do things differently. Without a true partnership with Aboriginal and Torres Strait Islander people, we will hamper our own progress.”
- Scott Morrison, Prime Minister of Australia (2020)

Of particular concern is Australia's slow progress against the target of closing the life expectancy gap by 2031. Aboriginal and Torres Strait Islander peoples still experience substantially lower life expectancies than non-Indigenous Australians. Progress in this area depends not only on progress in the area of health more generally, but also on progress in other areas including education, employment, housing and income. This speaks to the reality that disadvantage is both complex and intergenerational.

2.2 The contemporary expectations of corporations

The urgency of change is heightened by the contemporary expectations on both corporations and governments. Australians increasingly agree on the necessity of empowerment, recognition and self-determination for Aboriginal and Torres Strait Islander peoples. The Uluru Statement from the Heart captured this shared perspective:¹⁹

Uluru Statement from the Heart excerpt

“We seek constitutional reforms to empower our people and take a *rightful place* in our own country. When we have power over our destiny our children will flourish. They will walk in two worlds and their culture will be a gift to their country.

We call for the establishment of a First Nations Voice enshrined in the Constitution.”

- Uluru Statement from the Heart (2017)

The Uluru Statement from the Heart seeks the establishment of a First Nations Voice, to be enshrined in the Australian Constitution, and a Makarrata Commission, to supervise a process of agreement-making and historical truth-telling between governments and First Nations peoples. Makarrata captures Aboriginal and Torres Strait Islander peoples' aspirations for a relationship with Australia that is embedded in fairness and truthfulness, and based upon justice and self-determination.

These calls for change have been reiterated more recently by Noel Pearson, when he said that Australia is an “absurdity, a nation without its most vital heart” should Aboriginal and Torres Strait Islander peoples remain unrecognised.²⁰ Further, he said:

“Indifference and denial may have worked in the past but plainly today, there are far too many Australians determined to stand with Aboriginal and Torres Strait Islander peoples in rejecting the old idea of Australia. The situation calls for leadership to deliver the country from its contradictions.”

- Noel Pearson, Founder, Cape York Institute (2021)

Clearly, disempowerment remains at the centre of Aboriginal and Torres Strait Islander peoples' struggle for full participation in Australian life. There is significantly more work to do if Australia is to close the gap on disadvantage. For their part, governments and other organisations can no longer formulate and implement so-called solutions to the challenges facing Aboriginal and Torres Strait Islander peoples without engaging in proper negotiation, consultation and agreement with those peoples.

¹⁸ Commonwealth of Australia, Department of the Prime Minister and Cabinet (2020), 'Closing the Gap'

¹⁹ National Constitutional Convention (2017), 'The Uluru Statement from the Heart'

²⁰ Noel Pearson (2021), 'Speech at the National Museum of Australia'

If corporations are to make a sustained positive difference to the lives of Aboriginal and Torres Strait Islander Australians, then their role must be firmly rooted in commitments to equality, justice, inclusion and social and economic advancement for Australia's First Nations peoples. Furthermore, corporate leaders have the capacity to both positively alter the nation's narrative in relation to the design and implementation of policy and hold themselves and governments accountable for effecting change. Australian corporations should be more actively engaged here than they have been to date.

2.3 The role of corporations in working with Aboriginal and Torres Strait Islander communities to effect change

In many ways, reconciliation has become an essential part of Australian corporate integrity, if not identity. Supporting and advancing the empowerment of vulnerable communities, including many Aboriginal and Torres Strait Islander peoples, should be at the heart of business operations. Implementation is more challenging than commitment.

Numerous global initiatives have been established to help guide corporations in recognising the fundamental rights of Indigenous peoples and advancing their interests. These frameworks can help Australian corporations operationalise their commitments and support Aboriginal and Torres Strait Islander peoples to participate in a more collaborative way in the economy. Kylie Porter, Executive Director of the UN Global Compact Network Australia, has said that:²¹

"...these internationally agreed upon frameworks provide a roadmap to a future in which there is no gap between Aboriginal and Torres Strait Islander and non-Aboriginal and Torres Strait Islander Australians. A future in which the voices, experiences and teachings of the oldest continuous living culture in the world are heard and listened to so that together we can overcome societal challenges and ensure equality and prosperity for all."

- Kylie Porter, Executive Director, UN Global Compact Network Australia (2020)

The United Nations Global Compact, with reference to the United Nations Declaration on the Rights of Indigenous Peoples, sets out a six-step framework to help corporations promote and protect the rights of Indigenous peoples.²² The steps are as follows:

- commit the business to respect Indigenous peoples rights through a clear policy;
- conduct human rights due diligence and develop a plan for action that can be monitored and measured, and communicate performance against this;
- engage in consultations with Indigenous peoples for all matters that may concern their rights or have an impact in their communities;
- commit to obtaining and maintaining the consent of Indigenous peoples for projects that affect their rights or quality of life;
- establish a culturally appropriate grievance mechanism; and
- cooperate in remediation for any negative externalities on Indigenous peoples that result from business projects and operations.

Perhaps more pertinently, the 'Australian Business Guide to Implementing the UN Declaration on the Rights of Indigenous Peoples' suggests foundational actions for engaging with First Nations communities that align with the UN Global Compact framework.²³

²¹ Global Compact Network Australia, KPMG and the University of Technology Sydney (2020), [The Australian Business Guide to Implementing the UN Declaration of Rights of Indigenous Peoples](#)

²² United Nations Global Compact (2013), [A Business Reference Guide to the United Nations Declaration on the Rights of Indigenous Peoples](#)

²³ Global Compact Network Australia, KPMG and the University of Technology Sydney (2020), [The Australian Business Guide to Implementing the UN Declaration of Rights of Indigenous Peoples](#)

Exhibit 7:

Actions for engaging with Aboriginal and Torres Strait Islander communities

 Understanding	 Involving	 Forming
<ul style="list-style-type: none"> • Develop awareness of social context and use this to inform suitable engagement methods • Acknowledge inherent power imbalances and work to address this disparity 	<ul style="list-style-type: none"> • Provide meaningful opportunities for participation in business decision-making • Approach discussions with introspection, an open mind, and with willingness to change approaches 	<ul style="list-style-type: none"> • Form enduring relationships based on trust through accessible communication channels and information • Form a transparent and culturally respectful method for responding to feedback, and let this effect real change

Source: Global Compact Network Australia (2020); Panel analysis (2021)

Best practices for corporations may include undertaking pre-engagement analysis to identify Aboriginal and Torres Strait Islander communities that may potentially be impacted by corporate action. It also includes being sensitive to communication barriers such as language, time and visual preferences, and committing to ongoing consultation beyond obtaining consent for a particular project or development.

There are many ways in which corporations can advance this national interest. At an overarching level, they can: actively foster the national conversation, inform policy development and advocate for good policy; and employ their considerable human and financial resources in true partnership with Aboriginal and Torres Strait Islander peoples.

In particular, the areas where significant contributions can be made today are:

Exhibit 8:

Areas where Australian corporations can help alleviate Aboriginal and Torres Strait Islander disadvantage

 Advocating for constitutional recognition As Noel Pearson recently said, "Australia does not make sense without recognition, Australia is incomplete without recognition"	 Expanding supplier diversity Continue to engage in the procurement of goods and services from majority-owned First Nations businesses	 Assisting businesses Use skills and balance sheets to underwrite First Nations entrepreneurs and enterprises in building sustainably successful businesses across Australia
 Providing Aboriginal and Torres Strait Islander employment opportunities Help ensure that the proportion of First Nations people employed is equal to 3 per cent of the Australian workforce	 Increasing financial and human contributions to communities Improve outcomes relating to education and skills training, health and safety, and housing	

Source: Panel analysis (2021)







2. CORPORATE AUSTRALIA'S COMMITMENT TO AND RELATIONSHIP WITH ABORIGINAL AND TORRES STRAIT ISLANDER AUSTRALIANS

Each of the areas in Exhibit 8 focus on different aspects of empowerment to guide and inform corporate engagement with Aboriginal and Torres Strait Islander Australians. And this engagement cannot just be about raising awareness and knowledge. The skills and knowledge gained should motivate corporations to do much more. For empowerment to be effective, it

must involve truth-telling, and actively address issues of social and economic inequality, systemic racism and instances where the rights of Aboriginal and Torres Strait Islander peoples are ignored, denied or reduced. Corporations must expand their efforts beyond fostering awareness to actually implementing the measures necessary for substantive and substantial change.

Exhibit 9:

The six dimensions of reconciliation

1	 Respect	All Australians value Aboriginal and Torres Strait Islander cultures, rights, and experiences, which results in stronger relationships based on trust and respect that are free of racism
2	 Equality and equity	First Nations peoples participate equally in a range of life opportunities and the unique rights of Aboriginal and Torres Strait Islander peoples are recognised and upheld
3	 Unity	Australian society values and recognises Aboriginal and Torres Strait Islander cultures and heritage as a proud part of a shared identity
4	 Institutional integrity	Active support of reconciliation by the nation's political, business and community structures, and the prioritisation of the interests of First Nations peoples
5	 Historical acceptance	All Australians understand and accept the wrongs of the past and the impact of these wrongs. Australia makes amends for the wrongs of the past and ensures these wrongs are never repeated
6	 Economic participation	Australian companies use their expertise and capital to actively and fairly promote economic opportunity for First Nations peoples

Source: Adapted from Reconciliation Australia (2021); Panel analysis (2021)

While this requires an understanding of, and respect for Aboriginal and Torres Strait Islander cultures, customs, histories, and social and economic aspirations, the relationship must start with the establishment of legitimacy, and it must be founded on trust. Aboriginal and Torres Strait Islander Australians need to wholly believe that what is being offered by corporations and governments are shared and common interests, in which Aboriginal and Torres Strait Islander aspirations are at least equal.

Prioritising First Nations

Prioritising First Nations peoples will require corporations that seek to operate in close proximity to Aboriginal and Torres Strait Islander communities, or on Country, to prioritise the wishes and aspirations of Aboriginal and Torres Strait Islander peoples over and above those of other stakeholders.

Corporations need to build trust well in advance of making any decisions that affect Aboriginal and Torres Strait Islander peoples or their interests and seek consent for any benefits they want to secure. This demands close co-operation with Aboriginal and Torres Strait Islander communities and their leaders over substantively long periods of time. If the engagement and consent of Aboriginal and Torres Strait Islander peoples are required for corporate activities to go ahead, they cannot be achieved through a purely outcome-driven process.

As we have seen from the Dan Murphy's Darwin development experience, culturally sensitive, informed and knowledgeable consultation with Aboriginal and Torres Strait Islander peoples is essential. This would have required more than the type of consultation normally considered as sufficient to obtain a liquor licence. It would have required a negotiation between Woolworths Group and local Aboriginal and Torres Strait Islander communities as well as the organisations that support them. Together, these groups would have needed to discuss how Woolworths Group could assist in efforts to improve the wellbeing of local communities in terms of the safe consumption of alcohol. It would have also required an investment in developing partnerships to build a body of research and evidence around the implications of alcohol.

Rio Tinto, an organisation with a challenging and at times deficient record of engagement with Aboriginal and Torres Strait Islander peoples, has recently disclosed its changing approach as noted below. Its approach, as reported, focuses on engaging directly with community Elders, rather than just the executives running Aboriginal corporations on Elders' behalf.²⁴ The *Australian Financial Review* recently reported "the plan for stronger 'friendships' with both the administrative and cultural leaders of native title groups is one of several reforms to Rio's community relations and social performance strategy in the wake of last year's Juukan Gorge scandal".²⁵

"That is a very important part of what we are trying to do right now. They should not just be business relationships but actually include friendships where the communication channels are open and those relationships are deep and trusting so that something like this could never happen again."

-Dr Megan Clark AC, Director, Rio Tinto (2021)

When considering how corporations should participate in the economic life of Aboriginal and Torres Strait Islander communities – especially those with significant and entrenched disadvantage – it becomes clear that proper consultation requires negotiation and the prioritisation of First Nations leadership and advancement. This, in turn, requires corporations to invest in strengthening their capacity for meaningful engagement.

2.4 Reconciliation Action Plans

These elevated responsibilities, in building legitimacy and trust, recognising Aboriginal and Torres Strait Islander cultures and histories, forming meaningful relationships and engaging in proper consultation and negotiation, are captured in Reconciliation Action Plans (RAPs). These first came into existence in 2006.²⁶ There are approximately 1,100 organisations with an active RAP.²⁷ These RAPs set out a corporation's intention to build relationships with, and opportunities for, Aboriginal and Torres Strait Islander peoples. They deal with the progress businesses have made in terms of procurement, employment, retention, and cultural awareness, all of which seek to reduce the disadvantage faced by communities. There are four different levels of RAPs, which reflect an organisation's level of sophistication and maturity around reconciliation – Reflect, Innovate, Stretch and Elevate.

Many corporations begin with a Reflect RAP, where they consider where their relationships might lie, what they can practically do to make a difference and actions that might shape their RAP. Once relationships are mapped, businesses can move to an Innovate RAP and pilot and test programs. Organisations that implement a Stretch RAP set hard and public targets, while those with an Elevate RAP have the capacity and inclination to push stretched targets and think beyond their organisation and its impact on Aboriginal and Torres Strait Islander peoples. Reconciliation Australia outlines a set of actions and deliverables that workplaces are required to commit to in order to receive endorsement as an organisation that champions Aboriginal and Torres Strait Islander peoples. Some key themes unite the actions and deliverables outlined in RAPs: the need for organisations to formally commit to reconciliation, and the importance of consultation and negotiation with Aboriginal and Torres Strait Islander peoples.²⁸

²⁴ Peter Ker, 'Put elders on par with prime ministers: Rio Tinto', *Australian Financial Review*, 23 March 2021

²⁵ Peter Ker, 'Put elders on par with prime ministers: Rio Tinto', *Australian Financial Review*, 23 March 2021

²⁶ Reconciliation Australia (2017), 'Reconciliation News'

²⁷ Reconciliation Australia (2019), '2019 RAP Impact Measurement Report'

²⁸ Reconciliation Australia (2018), 'Reconciliation Action Plans: A framework for reconciliation action'

Exhibit 10:

The four levels of Reconciliation Action Plans





Level 1: Reflect	Level 2: Innovate	Level 3: Stretch	Level 4: Elevate
<ul style="list-style-type: none"> Clearly sets out the steps for the organisation to implement reconciliation initiatives Allows the organisation to spend time developing relationships with Aboriginal and Torres Strait Islander peoples and deciding on vision for reconciliation, before committing to specific actions or initiatives Helps produce future RAPs that are meaningful, mutually beneficial and sustainable 	<ul style="list-style-type: none"> Outlines actions that work towards achieving the organisation's unique vision Allows the organisation to be innovative in order to gain understanding of its sphere of influence, and establish the best approach to advance reconciliation Focuses on developing and strengthening relationships with First Nations peoples, engaging staff and stakeholders in reconciliation 	<ul style="list-style-type: none"> Best suited to organisations that have developed strategies, and established a strong approach towards advancing reconciliation internally and in the organisation's sphere of influence Focused on implementing longer-term strategies, and working towards defined measurable targets and goals - requires organisations to embed reconciliation initiatives into business strategies 	<ul style="list-style-type: none"> For organisations that have a proven track record of embedding effective RAP initiatives in their organisation and are ready to take on a leadership position to advance national reconciliation Strong strategic relationship with Reconciliation Australia and actively champion initiatives to empower First Nations peoples and create societal change Requires greater transparency and accountability



Source: Reconciliation Australia (2021); Panel analysis (2021)
 Note: The above list is not exhaustive, but represents organisations that have a national footprint.

Exhibit 11:

Key actions and deliverables to fulfil Reconciliation Action Plan requirements

Category	Actions	Examples of deliverables
 Relationships	<ul style="list-style-type: none"> Establish and strengthen mutually beneficial relationships Build relationships through National Reconciliation Week Promote reconciliation through sphere of influence Promote positive race relations through anti-discrimination strategies 	<ul style="list-style-type: none"> Meet with Aboriginal and Torres Strait Islander communities to continuously improve guiding principles for engagement and update engagement plan
 Respect	<ul style="list-style-type: none"> Increase understanding, value and recognition of Aboriginal and Torres Strait Islander peoples cultures, histories, knowledge, and rights through cultural learning Observe First Nations cultural protocols Build respect for First Nations culture through NAIDOC Week 	<ul style="list-style-type: none"> Consult with local Traditional Owners on the development and implementation of a cultural learning strategy for each distinct operation
 Opportunities	<ul style="list-style-type: none"> Improve employment outcomes by increasing First Nations recruitment, retention and professional development Increase Aboriginal and Torres Strait Islander supplier diversity to support improved economic and social outcomes 	<ul style="list-style-type: none"> Train all relevant staff in contracting First Nations businesses through Supply Nation or an equivalent organisation
 Governance	<ul style="list-style-type: none"> Establish and maintain an effective RAP working group Provide appropriate support for effective RAP commitment implementation Build accountability and transparency through reporting achievements, challenges and learning internally and externally 	<ul style="list-style-type: none"> Embed key RAP actions in performance expectations of all staff (including senior) Embed systems and capability to track, measure and report on RAP commitments Publicly report against RAP commitments annually

Source: Reconciliation Australia (2018); Panel analysis (2021)

Almost universally, RAPs have laudable aspirations and commitments. However, many do not have the embedded systems and processes to help drive organisational culture that ensures full compliance with those aspirations and commitments. This is reflective of the Panel's observations of Woolworths Group, in the issues around the Dan Murphy's Darwin development, noting as referred to in Exhibit 10 that Woolworths Group has an 'Innovate' RAP.

Corporations with the highest level RAPs are proactively seeking to reverse this deficiency by championing Aboriginal and Torres Strait Islander peoples' rights. They understand that they must work with First Nations peoples and businesses to create opportunities in order to implement frameworks for transparent consultation. They understand that they must also monitor, report and evaluate against these frameworks, engage with communities and key stakeholders to

build lasting relationships, and obtain actionable advice and guidance from Aboriginal and Torres Strait Islander peoples. Leading corporations know they must build a solid awareness and understanding of Aboriginal and Torres Strait Islander cultures, rights and aspirations within their organisations.

"If Australian corporations are to contribute to the change necessary for Aboriginal and Torres Strait Islander peoples to fully participate in the social and economic life of Australia then their RAPs must be ambitious and meaningful and companies must behave in all that they do, relevantly with the demands, requirements and accountabilities of their RAPs."

- Karen Mundine, CEO, Reconciliation Australia (2021)

3

Background to the Proposed Dan Murphy's Development

Endeavour proposed to develop a Dan Murphy's on the edge of Darwin International Airport, close to three dry Aboriginal and Torres Strait Islander communities: Bagot, Kulaluk and Minmarama Park. The proposed development would be the sixth largest Dan Murphy's in Australia. Woolworths Group operates Dan Murphy's and other liquor retail outlets through its subsidiary, Endeavour. Woolworths Group and Dan Murphy's are among Australia's best-known and most trusted brands. Many Endeavour and Dan Murphy's people feel a strong and, in the Panel's view, understandable sense of pride in the brand and the way its stores are run. In their view, Dan Murphy's raises the standard of service in the market and drives 'bad actors' out of business. However, this faith in the brand may have led to blind spots, causing important factors to be overlooked, especially given the complex social, historical and demographic context of Darwin and the Northern Territory.

3.1 The proposed Dan Murphy's development

The proposed development would be located between McMillans Road and Osgood Drive, near the Sabine Road intersection, on the northern edge of Darwin Airport Central, a business, retail and entertainment precinct.²⁹ The site is close to three dry Aboriginal and Torres Strait Islander communities: Bagot, Kulaluk and Minmarama Park. Endeavour had originally proposed locating the development at the intersection of Bagot Road and Osgood Drive, next to the Bunnings Darwin store. Following community opposition, it proposed to relocate the site in late 2020.

The Dan Murphy's development would be the anchor tenant of the proposed Darwin Airport Central retail precinct, worth approximately \$30 million in private investment. Woolworths Group has estimated that development of the store and the retail precinct will create 200 construction jobs and more than 150 permanent jobs. Woolworths Group estimates the store would inject \$15 million into the local economy in the construction phase, including 163 jobs over about seven months. If approved and operational, Dan Murphy's would directly employ up to 40 people, made up of around 15 full-time and up to 25 permanent part-time or casual staff. This would represent an additional \$6.5 million in salary and wages for the local economy. Additionally, maintenance and cleaning would be contracted to local suppliers.³⁰

The proposed store would be about 2,000 square metres in size, including approximately 1,300 square metres of retail space.³¹ It would offer about 400 unique products, including 1,000 types of premium spirits, 390 craft beers and premium beers, and nearly three times the range of wine products compared to an average Darwin liquor store.³² The store would be the first Dan Murphy's to open in the Northern Territory and one of the largest in Australia. The store would be operated by Endeavour, which conducted the market analysis, identified the suitable location and prepared all internal documents.

3.2 Woolworths Group: The company and the brand

Woolworths Group is one of Australia's most trusted companies.³³ It is one of the outstanding success stories of corporate Australia. The first Woolworths store opened in Sydney in 1924, and it has grown to include supermarkets in Australia (Woolworths and Metro) and New Zealand (Countdown, FreshChoice and SuperValue).³⁴

Across Australia and New Zealand, Woolworths Group sold \$63.7 billion of product in the 2020 financial year.³⁵ The bulk of sales (\$42 billion worth) stemmed from the Australian foods segment.³⁶ Through 3,357 stores, Woolworths Group services more than 29 million customers each week throughout Australia and New Zealand.³⁷ It is also Australia's largest private employer, with more than 215,000 people across its footprint. It employs close to 5,000 Aboriginal and Torres Strait Islander people across Australia.³⁸ Of this number, 97 per cent work in entry level jobs.³⁹ Woolworths Group has committed to reaching the Australian Government's Employment Parity Initiative target of 2.8 per cent of its workforce identifying as Aboriginal or Torres Strait Islander.⁴⁰ In the Northern Territory, it has met this target, with 4.36 per cent of its team identifying as Aboriginal or Torres Strait Islander (76 of 1,743 employees) across all its premises. However, there is a significant gap between these targets compared to the proportion of Aboriginal and Torres Strait Islander people in the Northern Territory. To meet this level, 30 per cent of Woolworths Group's employees would need to identify as Aboriginal or Torres Strait Islander.

Woolworths Group is one of Australia's best-known brands, having featured in the top 10 in Australia every year for the last decade, including being the most valuable brand in 2020.⁴¹ Its response to the COVID 19 pandemic – included providing 20.4 million meals through OzHarvest, Foodbank and FareShare, and establishing safe purchasing options for vulnerable Australians – has underscored

29 Woolworths Group (2020), 'Endeavour Group to move site of proposed Darwin Dan Murphy's store following community feedback'

30 Woolworths Group (2020), 'Endeavour Group to move site of proposed Darwin Dan Murphy's store following community feedback'

31 NT News (2021), 'First look inside Darwin's new Dan Murphy's superstore'

32 NT News (2021), 'First look inside Darwin's new Dan Murphy's superstore'

33 Roy Morgan (2021), 'It's official: Supermarkets are the most trusted brands in Australia'

34 Woolworths Group (2020), 'Annual Report', p. 28

35 Australian Bureau of Statistics (ABS), 'Retail Trade', Table 1, cat. No. 8501.0, January 2021; Stats NZ Retail trade survey: December 2020 quarter, actual retail sales; OFX Exchange rate data, FY2020

36 Woolworths Group (2020), 'Annual Report', p. 3

37 Woolworths Group (2020), 'Annual Report', p. 2

38 Rachel Mead, Woolworths Group (2021), 'Pathways and participation opportunities for Indigenous Australians in employment and business', *Standing Committee on Indigenous Affairs*, accessed 15 March 2021. Note that the actual number of Aboriginal and Torres Strait Islander employees may be higher as self-identification is optional

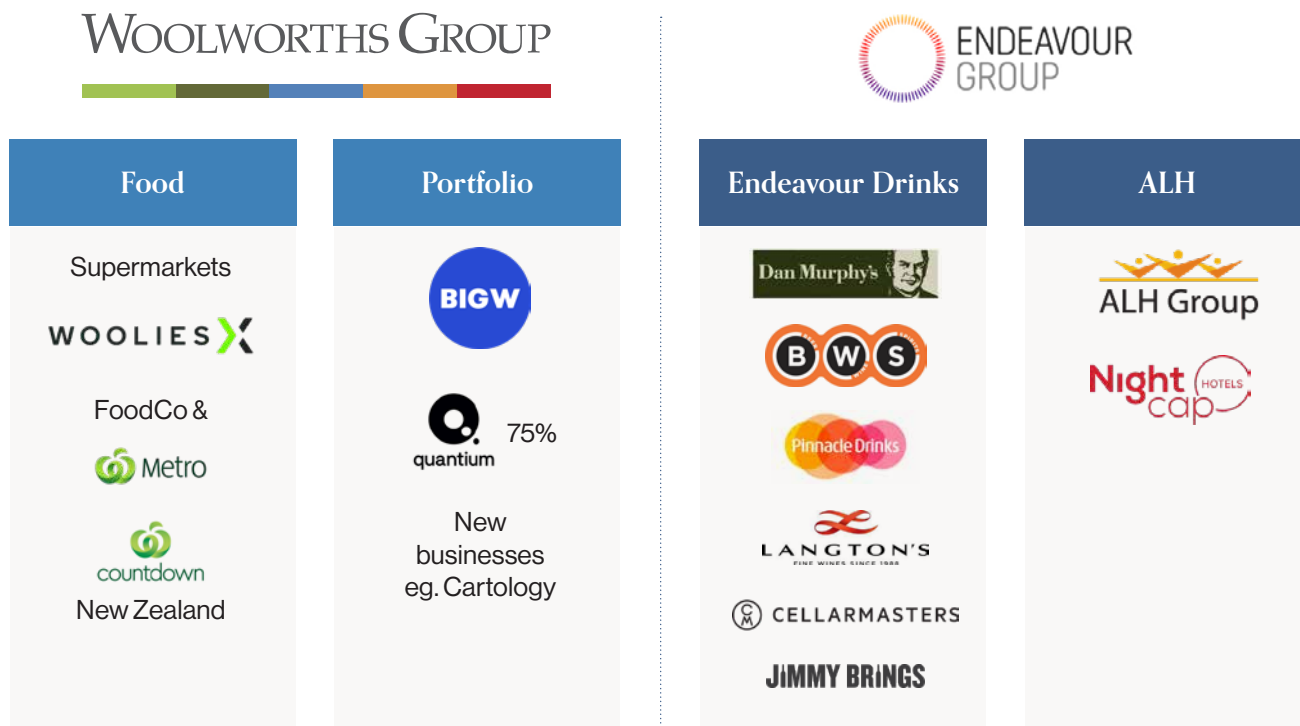
39 Rachel Mead, Woolworths Group (2021), 'Pathways and participation opportunities for Indigenous Australians in employment and business', *Standing Committee on Indigenous Affairs*, accessed 15 March 2021.

40 Woolworths Group, 'Indigenous Representation', accessed 6 April 2021

41 Brand Finance, 'Brand Directory, Australia', 2012–2021

Exhibit 12:

Brands under Woolworths Group and Endeavour Group



Sources: Woolworths Group Annual Report 2020, Endeavour Group, ALH

its brand status. It was nominated as Australia's second most trusted brand during the pandemic.⁴² Reader's Digest Australia named Woolworths the most trusted supermarket in Australia in 2020.⁴³

Woolworths Group entered the Northern Territory grocery market in 1960, when it purchased Centralian Traders in Alice Springs.⁴⁴ Since then, it has grown to operate 12 supermarkets across the Northern Territory: nine in the Greater Darwin region and three elsewhere in the Northern Territory.⁴⁵

3.3 Endeavour: Australia's largest integrated drinks and hospitality business

Endeavour operates liquor retail stores (BWS and Dan Murphy's), online-only platforms (Cellarmasters and

Langton's) and delivery services (Endeavour Delivery and Jimmy Brings).⁴⁶ Endeavour's drinks segment constitutes 14 per cent of Woolworths Group's revenues, with a further 2 per cent of revenues derived from hotel businesses.⁴⁷ Endeavour combines Woolworths Group's established and acquired liquor businesses. Woolworths Group has operated in the liquor retail market since 1960, through individual liquor licences attached to supermarkets. In 1984, these were consolidated into one trading unit, the Woolworths Liquor Group,⁴⁸ which was re-branded as Endeavour Drinks in 2016.

On 3 July 2019, Woolworths Group announced a merger of Endeavour Drinks and ALH Group (Woolworths Joint Venture partner) to form a single entity, Endeavour Group. Bruce Mathieson Group (BMG) had been Woolworths Group's joint venture partner in ALH Group. As part of the restructure, Woolworths Group acquired BMG's interest in ALH Group in exchange for a 14.6 per cent shareholding in Endeavour Group.⁴⁹ From 4 February

42 Woolworths Group (2020), 'Annual Report', p. 6

43 Readers Digest (2020), 'Trusted Brands', accessed March 2021

44 Brittany Golob (2017), 'Timeline: Woolworths', *Transform*, accessed 6 April 2021

45 Woolworths Group, *Store locator*, accessed 6 April 2021

46 Woolworths Group (2020), 'Annual Report' p. 130

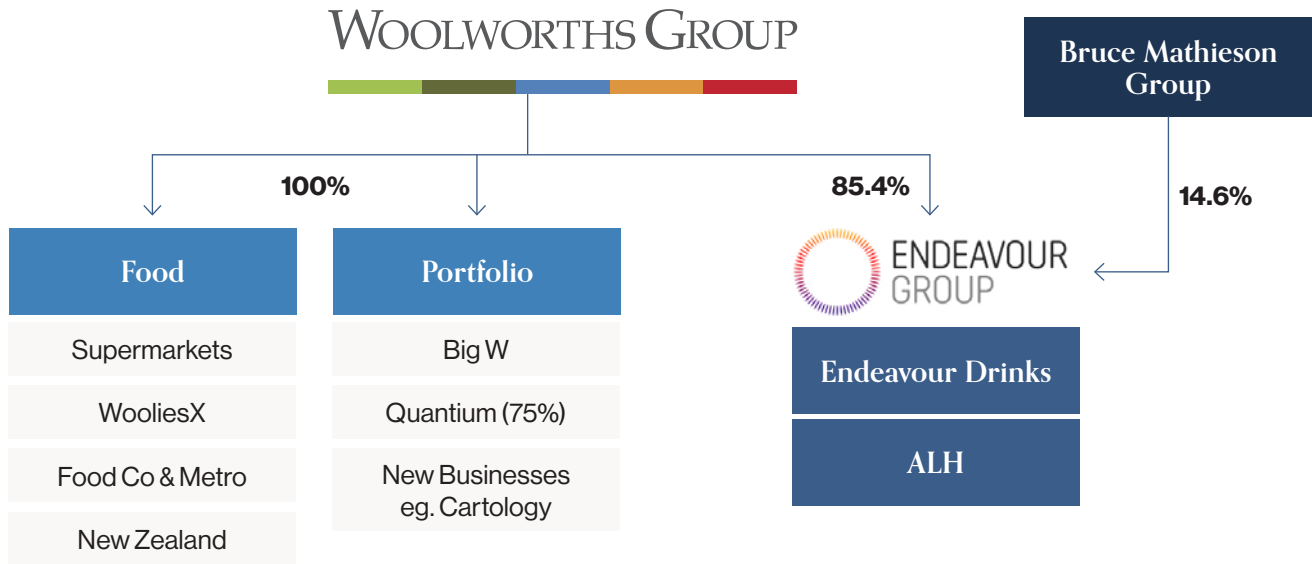
47 Woolworths Group (2020), 'Annual Report', p. 3

48 Woolworths Group, 'The Woolworths Story', accessed 6 April 2021

49 Woolworths Group (2019), 'Intention to separate Endeavour Group following merger of Endeavour Drinks and ALH'. Note, investors announcement distributed via ASX

Exhibit 13:

Endeavour Group post-merger ownership structure



Source: Woolworths Group (3 July 2019) 'Merger and separation of Endeavour Drinks and ALH', ASX shareholder presentation, page 14

2020, Endeavour Group has been 85.4 per cent owned by Woolworths Group and 14.6 per cent by BMG.⁵⁰

The separation will allow Woolworths Group to increase its focus on its core food and everyday needs markets, with a simplified organisational structure.⁵¹ Due to the effect of the COVID-19 pandemic, Woolworths Group has delayed the separation until later in 2021.⁵²

As of April 2021, Endeavour operates 1,629 liquor stores. It generated \$9.3 billion in revenue in 2019–20.⁵³ It also operates 334 hotels, including bars and dining, gaming, accommodation and venue hire operations.⁵⁴ It is the largest integrated drinks and hoteling business in Australia, and has added about 40 stores each year since 2013.⁵⁵ ALH Group is the largest operator of poker machines in Australia, with around 12,000 machines.⁵⁶ Across Australia, Endeavour employs 28,000 people. Woolworths Group currently operates 12 liquor retail outlets and four hotels with attached liquor retail outlets across the Northern Territory, which employ more than 100 people. In the Greater Darwin region, Endeavour

revenues in the 2018 financial year were \$71.6 million, with four hotels contributing 29 per cent and the remaining 71 per cent earned by eight BWS stores.

3.4 Community contributions across Woolworths Group

Woolworths Group strives to put its “customers, team members and the communities in which [it] works at the heart of everything” it does and has a track record of supporting local communities across Australia, including in the Northern Territory.⁵⁷

In the 2020 financial year, Woolworths Group gave \$31 million to community organisations across Australia.⁵⁸ Nationally, it works with OzHarvest, Foodbank and FareShare to divert surplus food to food rescue efforts or for use as animal feed.⁵⁹ During the COVID-19 pandemic, Woolworths Group has provided more than 20 million meals by making

50 Woolworths Group (2019), 'Intention to separate Endeavour Group following merger of Endeavour Drinks and ALH'. Note, investors announcement distributed via ASX

51 Sue Mitchell (2019), 'Woolworths shrinks to greatness', *Australian Financial Review*

52 Sue Mitchell (2020), 'Woolworths postpones drinks demerger, stands down 8000 hotel staff', *Australian Financial Review*

53 Woolworths Group (2020), 'Annual Report', p. 32

54 Woolworths Group (2020), 'Annual Report', p. 35

55 Sue Mitchell (2019), 'Woolworths shrinks to greatness', *Australian Financial Review*; Woolworths Group Annual Reports 2013–20

56 Charles Livingstone (2012), 'Location and estimated net gambling revenue generated by ALH Group poker machine venues: Report for GetUp! Ltd', *Monash University*

57 Woolworths Group (2020), 'Corporate Social Responsibility Strategy'

58 Woolworths Group (2020), 'Annual Report', p. 3

59 Woolworths Group (2020), 'Annual Report', p. 3

3. BACKGROUND TO THE PROPOSED DAN MURPHY'S DEVELOPMENT

surplus edible food available to hunger relief agencies, including through its Basics Boxes program.⁶⁰

In the Northern Territory, it provided 800,000 kilograms of produce for food rescue programs or animal feed, including sending 1,500 Basics Boxes to Arnhem Land through a partnership with the Arnhem Land Progress Aboriginal Corporation. Woolworths Group has also supported Share the Dignity, a charity that distributes sanitary items to women and girls who are homeless, at-risk or experiencing domestic violence. It provided 1,000 bags of period products to Aboriginal and Torres Strait Islander communities throughout the Northern Territory.

In Darwin and across the Northern Territory, Woolworths Group provided more than \$260,000 to schools, events, sports clubs and community organisations through fundraising, grants and donations between 2019 and 2020. In the two years to April 2021, it has provided \$16,000 in grants to schools through Junior Landcare, to support sustainable food production and waste management, and more than 5,000 items of teaching equipment to 101 primary schools and 152 early learning centres through its Earn & Learn program. It also supported local netball clubs through grants totalling \$26,550 in 2019–20. Additionally, it has supported Darwin Carols by Candlelight, the Darwin Festival and the Northern Territory Community Achievement awards (totalling \$32,000 in sponsorship). It contributed \$50,000 to Tangentyere Council Aboriginal Corporation in Alice Springs to buy a refrigerated vehicle for remote food delivery, and raised more than \$10,000 in 2020 for children's hospitals through Variety, the Children's Charity.

Endeavour also provides financial support to community organisations through a rebate system in which clubs receive 5 per cent of sales to club members at Endeavour's licensed venues. Across Darwin, its hotel venues have contributed \$170,000 to rugby, netball, football and roller derby groups since 2017. Community organisations are supported through fundraising, grants and donations. BWS staff have also provided \$2,000 worth of supplies and uniforms for Mission Australia's social enterprise, Café One.

There is a disconnect between Woolworths Group's contributions, its own view of its community relationships and how it is perceived by some in the Northern Territory and Darwin communities. The Panel heard from stakeholders that Woolworths Group was not giving in line with its significant Northern Territory earnings – but it provided more kilograms of food relief to organisations like FoodBank per store during the COVID-19 pandemic in the Northern Territory than anywhere else in Australia. Some community groups who spoke to the Panel contrasted Woolworths Group's "relatively little" efforts with Coles Group Limited's (Coles) prominence

in supplying food relief during the pandemic. One of the challenges for Woolworths Group and Endeavour may well be issues of social value, legitimacy and trust as discussed in Chapter 1 in the context of alcohol.

“What is Woolworths giving back to the community? All they do is just take, take, take.”

- Resident, Bagot community (3 March 2021)

A broader rethink of the corporate giving strategy could start with identifying need in consultation with the community, especially Aboriginal and Torres Strait Islander communities. Having a positive working relationship with the community is instrumental to the success of community giving. In particular, as indicated above, more than half of Woolworths Group's financial contributions (and the vast majority of Endeavour's specific giving) came from the hotels' rebate system in support of community sporting clubs in the Northern Territory. Where possible, this support should continue via a direct grants program unrelated to the consumption of alcohol.

“Woolworths did not have any credit in the bank coming into the application process... they were not giving back to the community.”

- Jayne Lloyd, Director, CatholicCare NT (4 March 2021)

3.5 The Dan Murphy's brand

Dan Murphy's is a large-format or 'big box' liquor retailer and one of Australia's largest and most successful retail brands, representing about 20 per cent of the Australian retail liquor market. An average Dan Murphy's store is more than 1,000 square metres in size and offers over 4,500 different products. Dan Murphy's itself is one of Australia's most well-known and trusted brands, and KPMG rated it in the top 10 brands for customer experience in 2020.⁶¹ It has a very large loyalty program, with 3.9 million active members out of a total membership of 4.5 million people. Online sales account for 9.2 per cent of its business, and its e-commerce sales are growing at double the rate of all sales. In terms of demographic appeal, Dan Murphy's sees itself as focusing on customers with adult children who have left home.

60 The Arnhem Land Progress Aboriginal Corporation (2020), 'ALPA to Deliver Basic Boxes to the Elderly in Arnhem Land'; Woolworths Group (2020), 'Annual Report', p. 3

61 KPMG (2020), 'Research reveals Australia's top brands for CX during COVID-19'

Product range, size and competitive prices are fundamental to Dan Murphy's value proposition in the market. Given the greater range, lower prices and bulk-purchasing options (which includes providing trolleys in-store), customers spend 50 per cent more per visit at a Dan Murphy's compared to a BWS store. Dan Murphy's claims that it helps customers "discover the world of drink experiences", and believes the core of its appeal to customers is to "drink better", with a focus on premium wines, spirits and craft beers.⁶² Its senior executives note in particular that the core of the business is focused on fine wine, classed as wines that sell for \$20 or more per bottle. Nationally, Dan Murphy's generates more of its revenue from sales of wine and premium products, compared to smaller Endeavour retailers such as BWS.

It is important to note that in the Darwin and Northern Territory market, Dan Murphy's has committed not to match or beat prices below the Minimum Unit Price of alcohol set by the Northern Territory Government (or its own voluntary minimum unit prices, which exceed those of the Northern Territory Government) or externally advertise the liquor price guarantee at all.⁶³ Subject to these important provisos, the Panel observes Dan Murphy's core offering to customers includes a "lowest liquor price guarantee". The 'guarantee' is two-fold. First, if a customer can show a lower competitor price for an identical product, Dan Murphy's will beat the price on the spot. Second, Dan Murphy's has a dedicated team who proactively monitor competitors' prices, with in-store prices adjusted daily to ensure they are the lowest in the surrounding market.⁶⁴

Many Endeavour personnel articulated a deep belief and sense of pride in the Dan Murphy's brand during stakeholder interviews with the Panel. At the core of this belief is a view that Endeavour's stores (such as Dan Murphy's and BWS) embody best practice in the business of alcohol retailing in Australia and globally. Staff members are proud of the way stores are run. The experience of Endeavour personnel as reported to the Panel is that a common outcome of Endeavour's higher standards of customer service and responsibility was a reduction in trade for less reputable competitors, which could make them unviable in the long-term. This reinforces Endeavour's view that Dan Murphy's creates a net benefit for the communities in which it operates.

However, while this pride in the Dan Murphy's brand is sincerely held, some stakeholders believe it led to a powerful and dominating form of 'brand self-belief'. In this view, an unwavering faith in the brand and its ability to do good in the community (reinforced by positive feedback from customers) led to blind spots, creating deep challenges and risks for the business overall. In the Panel's view, that brand self-belief was a factor in the context of the Darwin Dan Murphy's development. While there was a sincere belief that a Dan Murphy's would raise the overall standard of service in the market, this belief may have obscured the social, historical and demographic complexity of the community and distracted from the significant risks inherent in opening a big box retail liquor store in Darwin. The full context around the proposed development is explored in more depth in the following chapters.

62 This fits within Woolworths Group's overarching purpose: "We create better experiences together for a better tomorrow"

63 Endeavour (2020), 'A statement in regards to the Dan Murphy's Darwin application being approved'

64 Dan Murphy's (2021), 'Lowest Liquor Price Guarantee'

4

Background on the Northern Territory and Darwin

The process to establish the proposed Dan Murphy's Darwin development did not adequately consider the economic, demographic and social contexts of Darwin and the Northern Territory, especially in relation to the large Aboriginal and Torres Strait Islander communities. This chapter provides an overview of those contexts, especially as they relate to Aboriginal and Torres Strait Islander peoples. While Darwin is a relatively affluent city with a young population, the population is in decline. Business leaders and others attribute this partly to an issue of 'liveability', including access to high-quality retail goods and other services. The development ambitions which the Northern Territory Government, business and other groups have for Darwin as a safe and highly liveable prosperous city is completely understandable. But there is a broader context of entrenched and historical Aboriginal and Torres Strait Islander disadvantage, which needs to be understood. Aboriginal and Torres Strait Islander peoples live with highly unsatisfactory levels of poverty, unemployment, health, education, housing and imprisonment. Many aspects of this disadvantage have been acutely felt in the three Aboriginal and Torres Strait Islander communities closest to the proposed Darwin Dan Murphy's development – the Bagot, Kulaluk and Minmarama Park communities. Until more recently, Woolworths Group and Endeavour inadequately considered this context in pursuit of the proposal.

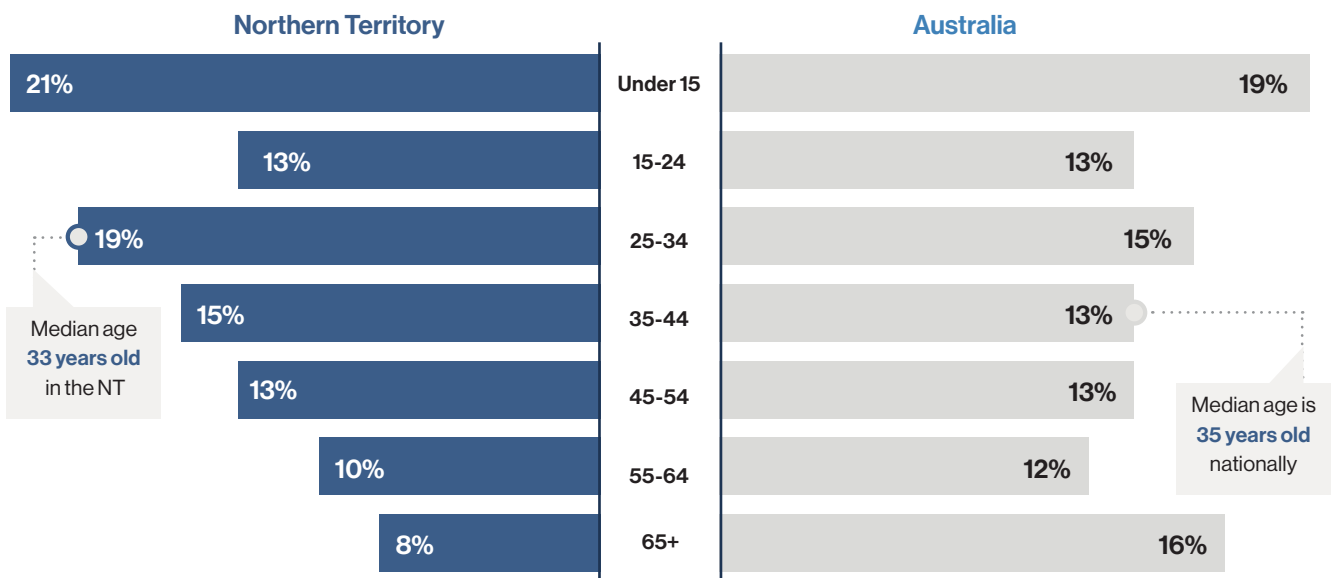
4.1 Economic and demographic context

The Northern Territory is the smallest state or territory by population in Australia. A total of 246,500 people live there, with 40 per cent living in remote and very remote regions.⁶⁵ Across the Northern Territory, 30 per cent of the population is made up of Aboriginal and Torres Strait Islander peoples.⁶⁶ In remote and very remote areas, Aboriginal and Torres Strait Islander peoples constitute 77 per cent of the population.⁶⁷ The Northern Territory has a median age of 33 years, compared

to the national median of 35 years.⁶⁸ Before the COVID-19 pandemic, the population was declining due to negative net interstate migration and falling overseas immigration.⁶⁹ The size of the Northern Territory economy is \$26.2 billion, accounting for 1.3 per cent of Australia's gross domestic product.⁷⁰ It has the second-highest gross state product (GSP) per capita in Australia, with \$106,000 per head. This is 36 per cent higher than the national figure of \$78,000 and behind only Western Australia at \$120,000.⁷¹

Exhibit 14:

Age distribution of the Australian and Northern Territory populations



Source: ABS (2020), 'National, state and territory population', Table 6. Population by Age and Sex - States and Territories, cat. no 3101.0

65 ABS (2021) 'Australian Demographic Statistics: National, state and territory population, September 2020'; Department of Treasury and Finance, 'Northern Territory Economy - Population', accessed March 2021

66 ABS (2018), 'Estimates of Aboriginal and Torres Strait Islander Australians June 2016', cat. No. 3238.0.55.001

67 Northern Territory Department of Treasury and Finance; ABS, 'Estimates of Aboriginal and Torres Strait Islander Australians', Chart 11: Geographical share (%) of total state/Northern Territory Aboriginal population, cat. No. 3238.0.55.001

68 ABS (2020) Australian Demographic Statistics: National, state and territory population, 'TABLE 57. Estimated Resident Population By Single Year Of Age, Northern Territory', cat. No 3101.57 and 'TABLE 59. Estimated Resident Population By Single Year Of Age, Australia', cat. No 3101.59

69 ABS (2020) 'Australian Demographic Statistics: National, state and territory population, September 2020', released 18 March 2021

70 ABS, 'Australian National Accounts: State Accounts', cat. No. 5220.0 as published by Department of Treasury and Finance, 'Northern Territory Economy - Economic Growth', accessed 31 March 2021

71 ABS, 'Australian National Accounts: State Accounts', Table 1. Gross State Product, Chain volume measures and current prices, cat. No. 5220.0, released 20 November 2020. Current prices as of June 2020

Darwin

Darwin is the capital city of the Northern Territory and is located on the north-western tip of the territory in the tropics, surrounded by the Arafura Sea. According to the most recent Australian Bureau of Statistics (ABS) estimates, 147,231 people live in the Greater Darwin region, or 60 per cent of the Northern Territory population.⁷²

“The competition model is the path to prosperity for Darwin and the Northern Territory. We need to attract people, and part of that is liveability”

- Greg Ireland, CEO, Northern Territory Chamber of Commerce (11 March 2021)

Darwin is the only Australian capital city currently experiencing population decline, and it is experiencing this at a higher rate compared to the Northern Territory as a whole.⁷³ Greater Darwin’s population declined by 0.1 per cent in 2020, falling for the third consecutive year.⁷⁴ The decline has been primarily concentrated in Darwin suburbs (where the resident population has fallen by 0.7 per cent following a 2.5 per cent decline in the previous year) and its surrounding suburbs (down 1.3 per cent following a 1.5 per cent decline in the previous year).⁷⁵ Greater Darwin is relatively more diverse than the Australian population as a whole, with 37.3 per cent of the population born overseas compared to 33.3 per cent nationwide.⁷⁶

Compared to all other capital city areas, the median income from employment in Darwin was the second highest, with workers earning \$62,379 annually.⁷⁷ This high level of income places Greater Darwin among the most socio-economically advantaged parts of Australia, with 38 per cent of the population in the highest quartile of the ABS’s Socio-Economic Indexes for Areas (SEIFA) bands.⁷⁸ However, there are also significant pockets of disadvantage, especially in the proposed development’s immediate vicinity. Neighbouring Coconut Grove is in the 28th percentile for disadvantage; The Narrows in the 23rd percentile; and Ludmilla, the suburb on the west

side of Bagot Road, has a higher level of disadvantage than 83 per cent of suburbs throughout Australia.⁷⁹

Darwin’s aspirations as a modern capital city

Darwin aspires to be a modern, vibrant, tropical capital, with access to first-class services and amenities equivalent to or exceeding southern Australian cities. Darwin markets itself as a sophisticated city with a “relaxed charm”, with accommodation, eateries, clubs, pubs, museums and other amenities that are “equal to what you’ll find in southern cities”.⁸⁰ Both the Northern Territory and Commonwealth Governments have invested significant funds to develop Darwin and make it the “capital of Northern Australia”.⁸¹ Chief Minister the Hon. Michael Gunner has set ambitious goals to reflect Darwin’s position as “not near Asia, but in Asia”.

“We have a vision for Darwin to service the wider region; we see our competition as Singapore, not Sydney.”

- Hon. Michael Gunner, Chief Minister of the Northern Territory (November 2019)

The Northern Territory and Commonwealth Governments have developed a 10-year plan to position Darwin as a “vibrant and liveable tropical capital city, supported by a growing population and diverse economy”.⁸² The key tenets of the plan include revitalising the city centre to position Darwin as an attractive place to live, work and study; making Darwin a cooler and greener city; showcasing and celebrating Larrakia culture and supporting improved economic development outcomes for the Larrakia people; making Darwin an attractive place for visitors; and making Darwin a preferred place to study.⁸³

72 Decline in the 2018-19 financial year was 0.8 per cent in Greater Darwin and an increase of 0.01 in the rest of the territory. ABS (2020), ‘Regional Population 2019-20’, cat. No. 3218.0, accessed 15 April 2021

73 ABS, (30 March 2020) ‘Regional Population 2019-20’, cat. No. 3218.0, accessed 15 April 2021

74 ABS, (30 March 2020) ‘Regional Population 2019-20’, cat. No. 3218.0, accessed 15 April 2021

75 ABS, (30 March 2020) ‘Regional Population 2019-20’, cat. No. 3218.0, accessed 15 April 2021

76 ABS (2016), as published by ‘Greater Darwin [Greater Capital City Statistical Area] (GCCSA) Quickstats’, accessed 31 March 2021

77 ABS (2020), ‘Personal Income in Australia: Employee Income by Greater Capital City Statistical Area (2011-12 to 2017-18)’, accessed 31 March 2021

78 ABS (2018), ‘Census of Population and Housing: Socio-Economic Indexes for Areas (SEIFA), Australia, 2016’, Data cube: ‘Statistical Area Level 4, Population Distributions, SEIFA 2016’, Table 2, Index of Relative Socio-economic Advantage and Disadvantage: Population Distributions for SA4s

79 ABS (2018), ‘Census of Population and Housing: Socio-Economic Indexes for Areas (SEIFA), Australia, 2016’, Data cube: ‘Statistical Area Level 4, Population Distributions, SEIFA 2016’, State Suburb Indexes

80 City of Darwin, ‘About Darwin’, accessed March 2021

81 ABC News (2018), ‘Darwin’s ambitious \$200m plan to revamp Australia’s tropical capital, focus on university’

82 Commonwealth Department of Infrastructure, Transport, Regional Development and Communications (2021), ‘Darwin City Deal’

83 Australian Government, Northern Territory Government, City of Darwin (2020), ‘Darwin City Deal Annual Progress Report’

“Darwin needs to offer the range and opportunity that exists elsewhere in Australia. Darwin has a real opportunity to grow the population... If the development didn't go ahead, [it] would send the message to Darwinians that something that is 'normal, natural and good in other locations' is detrimental in the Territory.”

- Ian Kew, former CEO, Northern Territory Airports (11 March 2021)

Despite these ambitious goals and aspirations, several individual stakeholders and business groups lamented Darwin's lack of liveability, which is partly attributed to what they see as the absence of services and amenities equivalent to those in southern capitals. For many stakeholders, liveability also means a society which is safe and secure and free from the harms and impacts of excessive alcohol consumption. This lack of liveability is seen as contributing to Darwin's declining population, with business groups noting a shortage of available housing, amenities and well paid jobs. Several stakeholders who spoke to the Panel said that developing retail precincts, services and other amenities will attract business, jobs and investment.⁸⁴ It was also noted that Darwin does not have top-tier major retail outlets such as a Myer or David Jones. Given its significant product range, brand power and size, some stakeholders would view a Dan Murphy's development as making a positive contribution to the liveability of the city. However, other stakeholders noted that Darwin needed other large-format department stores before a Dan Murphy's.

4.2 Aboriginal and Torres Strait Islander peoples in the Northern Territory and Darwin

The Northern Territory

Aboriginal and Torres Strait Islander Australians have inhabited Australia and the Northern Territory for at least 65,000 years. The oldest known definitive proof of human existence on the continent of Australia was found in Kakadu National Park, in the Northern Territory.⁸⁵ The Northern Territory contains the traditional lands of as many as 125 Aboriginal and Torres Strait Islander nations, with more than 100 Indigenous languages still being spoken.⁸⁶ The Larrakia People are the Traditional Owners of the Greater Darwin region from Cox Peninsula in the west to Gunn Point in the north, Adelaide River in the east and past Manton Dam in the south.⁸⁷

The Northern Territory has the highest proportion of Aboriginal and Torres Strait Islander people of any state or territory, and the fourth-largest number of Aboriginal and Torres Strait Islander people overall.⁸⁸ According to official estimates, 74,546 Aboriginal and Torres Strait Islander residents call the Northern Territory home, or 30 per cent of the Northern Territory's population.⁸⁹ In very remote areas, Aboriginal and Torres Strait Islander peoples make up 77 per cent of the population.⁹⁰ Nearly one in ten Aboriginal and Torres Strait Islander people live in the Northern Territory.⁹¹ They are, on average, younger than the rest of the population, with a median age of 26 years, compared to 34.9 years for non-Indigenous Territorians. In Australia as a whole, Aboriginal and Torres Strait Islander peoples have a median age of 23 years, compared to 37 years for the non-Indigenous population.

Darwin

According to ABS estimates, Darwin had 17,465 Aboriginal and Torres Strait Islander residents in 2016.⁹² Aboriginal and Torres Strait Islander peoples' share of the Greater Darwin population rose from 11.1 per cent in 2006 to 11.9 per cent in 2016.⁹³ In 2006, 19.8 per cent

84 Property Council of Australia Northern Territory branch (2019), '20 by 20 Reforms'

85 Chris Clarkson, Zenobia Jacobs, Ben Marwick et al. (2017), 'Human occupation of northern Australia by 65,000 years ago', *Nature*; AusAnthrop (2021), 'Australian Aboriginal tribal database', accessed March 2021

86 Northern Territory Government (2018), 'Aboriginal languages in NT'

87 Larrakia Nation Aboriginal Corporation (2021), 'The Larrakia People', accessed 31 March 2021

88 ABS (2018), 'Estimates of Aboriginal and Torres Strait Islander Australians', June 2016

89 ABS, 'Estimates of Aboriginal and Torres Strait Islander Australians June 2016'. Note: the variation between the ABS Census count of 58,248 people, which is used to derive the estimate, accounts for non-responses, net undercounting (where individuals are missed by the Census), the number temporarily overseas or out of their usual place of residence. For more information, see the ABS Methodology.

90 Department of Treasury and Finance, Northern Territory (2021), 'Northern Territory Economy – Aboriginal population', accessed 31 March 2021

91 ABS (2018), 'Estimates of Aboriginal and Torres Strait Islander Australians June 2016'

92 ABS (2020), 'Estimates of Aboriginal and Torres Strait Islander Australians June 2016', Table 7: Estimated resident Aboriginal and Torres Strait Islander and Non-Indigenous populations, Statistical Area Level 2–30 June 2016'. The official count on the 2016 Census night put the Aboriginal and Torres Strait Islander population at 11,966, undercounting by 31 per cent

93 ABS (2020), 'Estimates of Aboriginal and Torres Strait Islander Australians June 2016', Table 7: Estimated resident Aboriginal and Torres Strait Islander and Non-Indigenous populations, Statistical Area Level 2–30 June 2016'

of Aboriginal and Torres Strait Islander peoples in the Northern Territory lived in Darwin. By 2016, this had grown to 23.4 per cent.⁹⁴ These results partly reflect internal migration trends among Aboriginal and Torres Strait Islander peoples in the Northern Territory towards increased urbanisation.⁹⁵ In addition, frequent short-term movement to urban areas is common among First Nations peoples in the Northern Territory with one estimate indicating as many as 35 per cent of people may be travelling between communities at any time.⁹⁶

Such mobility and other factors mean it is difficult to confidently count resident populations. Thus, in Darwin, many visitors from across the “top end” are temporarily resident for education, employment, family gatherings or to access services with some variation between wet and dry seasons. Unofficially, Darwin-based Danila Dilba Health Service has estimated it has 14,000 Aboriginal or Torres Strait Islander patients on its records, and an additional 2,250 ‘transient clients’ who are visiting Darwin temporarily, and are staying with family or camping in Darwin’s ‘long grass’.⁹⁷ Even within a community, it is hard to conduct a population count – for example, one estimate of different populations for the Bagot community found a regular service population (those present in the community at any one time) that was 41 per cent higher than the count of usual residents, with this rising to as much as 75 per cent higher at particular peak times of the year, such as during the Darwin Show.⁹⁸ In effect, the ABS estimate of 17,465 usual residents provides only a base number for policy planning with many additional people using Darwin as a temporary abode at any given time. Stakeholders who spoke to the Panel put the number of Aboriginal and Torres Strait Islander peoples in Darwin well above 20,000 people.

4.3 Economic outcomes for Aboriginal and Torres Strait Islander peoples in the Northern Territory

Aboriginal and Torres Strait Islander peoples in the Northern Territory earn less than their non-Indigenous counterparts. More than half of working-age Aboriginal and Torres Strait Islander peoples in the Northern Territory earn less than \$300 per week.⁹⁹ They are more than twice as likely to be in this low-income bracket compared to non-Indigenous people.¹⁰⁰ An Aboriginal or Torres Strait Islander person in the Northern Territory is also 58 per cent more likely to be in this income grouping than an Aboriginal or Torres Strait Islander person anywhere else in Australia.¹⁰¹ Among those who were working or looking for work in the Northern Territory, 45.2 per cent were employed full time, 20.6 per cent were employed part time and 26.7 per cent were unemployed.¹⁰²

Aboriginal and Torres Strait Islander peoples earn nearly 40 per cent less than the average person in Darwin. According to 2016 Census data, the median weekly income for all residents was \$1,052, compared to \$647 for Aboriginal and Torres Strait Islander peoples.¹⁰³ When comparing household earnings, the difference was less dramatic, although Aboriginal and Torres Strait Islander households still earned nearly 15 per cent less than non-Indigenous households (\$1,864 per week compared to \$2,183 per week across all Darwin households).¹⁰⁴ The unemployment rate was also higher in Darwin among First Nations peoples, with 12 per cent compared to 5 per cent of the general population in 2016.¹⁰⁵ However, this was significantly better compared to the rest of Australia, which had a national unemployment rate for Aboriginal and Torres Strait Islander people of 18.2 per cent.¹⁰⁶

94 ABS (2008), ‘Experimental Estimates of Aboriginal and Torres Strait Islander Australians, Jun 2006’, item 5, Table 1, cat. No. 3238.055.001; ABS (2020), ‘Estimates of Aboriginal and Torres Strait Islander Australians June 2016’, Table 7: Estimated resident Aboriginal and Torres Strait Islander and non-Indigenous populations, Statistical Area Level 2–30 June 2016’. Local government area groupings (GCCSA) area used in both counts

95 Increases in self-identification have also been identified as a factor that helps explain increases in the overall Aboriginal and Torres Strait Islander population nationally but particularly in urban areas. John Taylor and Martin Bell (2003), ‘Population mobility and indigenous peoples in Australasia and North America’; Andrew Taylor and Sigurd Dyrting (2019), ‘Contemporary Northern Territory Indigenous Migration Trends’, *Northern Institution – Charles Darwin University*

96 Pauline B. Thompson Guerin and Bernard Guerin (2018), ‘Mobility and sustainability of remote Australian Indigenous communities: A review and a call for context-based policies’, *The Australian Community Psychologist*, Volume 29, No. 2, p. 25

97 ABS (2019), ‘National Aboriginal and Torres Strait Islander Health Survey’, Use of health services and health-related actions

98 John Taylor (2006), ‘Population and diversity: policy implications of emerging Aboriginal demographic trends’, *Centre for Aboriginal Economic Policy Research – the Australian National University*, CAEPR Discussion Paper No. 283, pp. 28–29

99 ABS (2017), ‘General Community Profile’; ABS (2017), ‘Aboriginal and Torres Strait Islander Peoples Profile for the Northern Territory’

100 ABS (2017), ‘General Community Profile’; ABS (2017), ‘Aboriginal and Torres Strait Islander Peoples Profile for the Northern Territory’

101 Of all Aboriginal and Torres Strait Islander people who declared their personal income in the 2016 Census, 34 per cent were in the low income bracket. ABS (2017), ‘General Community Profile’; ABS (2017), ‘Aboriginal and Torres Strait Islander Peoples Profile for the Northern Territory’

102 The remaining 7.5 per cent of Aboriginal and Torres Strait Islander peoples participating in the labour force were classified as ‘away from work’; for example, an individual recording no hours worked but stating they had a job. ABS (2017), ‘Census of Population and Housing 2016 – Northern Territory Aboriginal and/or Torres Strait Islander Peoples – Employment’

103 ABS (2017), ‘General Community Profile’; ABS (2017), ‘Aboriginal and Torres Strait Islander Peoples Profile for the Greater Darwin GCCSA’

104 The difference in household earnings may result from household composition, as some Aboriginal and Torres Strait Islander households may include non-Indigenous people. Given the higher personal income of non-Indigenous Territorians, the difference in household income is less pronounced than personal income (between Aboriginal and Torres Strait Islander and non-Indigenous individuals). ABS (2017), ‘General Community Profile’; ABS (2017), ‘Aboriginal and Torres Strait Islander Peoples Profile for the Greater Darwin GCCSA’

105 ABS (2017), ‘Census of Population and Housing 2016 – Northern Territory Aboriginal and/or Torres Strait Islander Peoples – Employment’

106 ABS (2017), ‘Census of Population and Housing 2016 – Aboriginal and/or Torres Strait Islander Peoples – Employment’

The lower personal and household earnings among Aboriginal and Torres Strait Islander peoples include government-provided income supports. In the Northern Territory, as of December 2020, 29,291 Aboriginal and Torres Strait Islander people (59 per cent of the population aged 15 to 65) were on income

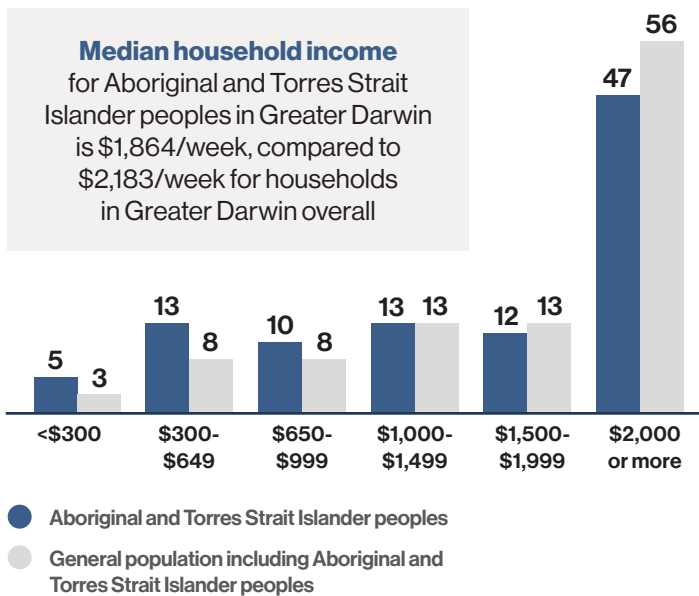
support.¹⁰⁷ This is higher than the national rate of 54 per cent of working-age Aboriginal and Torres Strait Islander people on income support.¹⁰⁸ Nearly 70 per cent of Northern Territory income support recipients are Aboriginal or Torres Strait Islanders.¹⁰⁹

Exhibit 15:

Aboriginal and Torres Strait Islander unemployment and household income for Darwin and Australia

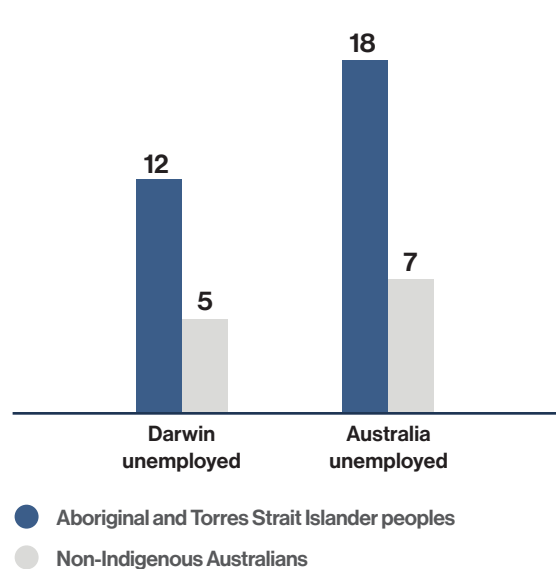
Weekly household earnings by income group

Percentage of households



Unemployment rate in Darwin and Australia

Percentage of population over 15 years old



Note: Percentage of households with all incomes stated. 'Unemployed' has been defined in this instance as actively looking for full-time or part-time work. Sources: ABS (2016), Census Quickstats - Greater Darwin GCCSA, Median weekly household income for all private dwellings; ABS (2016), Census Quickstats - Greater Darwin GCCSA, Dwelling characteristics - Aboriginal and/or Torres Strait Islander households median weekly household income; Northern Territory Government and ABS (2016), Aboriginal Labour Force Characteristics, Table 4: Unemployed persons and rates

107 Income support as defined by Australian Institute of Health and Welfare includes Carer Payment, Disability Support Pension, Jobseeker Payment (formerly Newstart), Parenting Payment (Partnered or Single) and Youth Allowance (other). Individuals can only receive one income support payment type at a time. Department of Social Services (2020), 'DSS Payment Demographic Data', accessed 7 April 2020; Methodology drawn from Australian Institute of Health and Welfare (2019), 'Income support among working-age Indigenous Australians'

108 Department of Social Services (2020), 'DSS Payment Demographic Data', accessed 7 April 2020; ABS (2018), 'Estimated resident Aboriginal and Torres Strait Islander and Non-Indigenous populations, Indigenous regions June 2016'

109 Only those who identified as Aboriginal or Torres Strait Islander are counted as Aboriginal or Torres Strait Islander. Department of Social Services (2020), 'DSS Payment Demographic Data', accessed 7 April 2020

4.4 Aboriginal and Torres Strait Islander peoples and social outcomes in the Northern Territory

Education

Educational outcomes for Aboriginal and Torres Strait Islander peoples in the Northern Territory are slightly worse than the Northern Territory average. While the average Northern Territory resident completes 11.9 years of schooling, Aboriginal and Torres Strait Islander peoples attend nearly two full years less, averaging 10.1 years.¹¹⁰ Across Australia, most Aboriginal and Torres Strait Islander children attend school an average of 11.6 years. This means that in the Northern Territory, fewer Aboriginal and Torres Strait Islander students complete year 12, limiting their educational and employment opportunities. Fewer First Nations students in the Northern Territory go to university – just 0.85 per cent were engaged in tertiary studies, compared to 3.5 per cent of the non-Indigenous population in 2016.¹¹¹

In Darwin, Aboriginal and Torres Strait Islander peoples attend school for almost a year less, on average, than the city's population as a whole. Where 57 per cent of all Darwinians had completed Year 12 in 2016, just 34 per cent of Aboriginal and Torres Strait Islander residents had finished secondary schooling.¹¹² At the last Census, 4.62 per cent of Darwinians were attending a tertiary educational institution compared to 2.53 per cent of Aboriginal and Torres Strait Islander residents.

Housing

It is widely accepted that one key determinant of good health is access to suitable housing. The highest levels of overcrowding in Australia occur in the remote Northern Territory.¹¹³ Based on the 2016 Census, about 27,600 Aboriginal or Torres Strait Islander people in the Northern Territory live in overcrowded houses, of which 10,700 are considered homeless.¹¹⁴ This is also reflected in waiting times for public housing in Darwin. At 31 December 2020, waiting times varied,

from 6–8 years for a one-bedroom home to 2–4 years for two-bedroom and three-bedroom housing.¹¹⁵

Crime and violence

Aboriginal and Torres Strait Islander peoples in the Northern Territory are more likely to be represented in crime statistics than Aboriginal and Torres Strait Islander peoples elsewhere. They are also more likely to be represented than the broader Northern Territory population. While offender rates among Aboriginal and Torres Strait Islander peoples was over 6.6 per 100 in the Northern Territory, in New South Wales it was 5.7 and 8.6 in Queensland.¹¹⁶ 85 per cent of criminal proceedings are against Aboriginal and Torres Strait Islanders, who make up 81 per cent of the Territory's criminal offenders and just 30 per cent of the population.¹¹⁷ Nationally, Aboriginal and Torres Strait Islander peoples are more than 10 times as likely to be victims of assault than non-Indigenous people.¹¹⁸ In a 2014–15 survey, one in nine Aboriginal or Torres Strait Islander peoples in the Northern Territory reported experiencing physical violence in the previous 12 months.¹¹⁹ Of these, almost two-thirds (62 per cent) reported that their most recent experience of physical violence was by a family member. The National Plan to Reduce Violence against Women and their Children 2010–2022 states that Aboriginal and Torres Strait Islander women and girls are up to 35 times more likely to experience domestic and family violence than non-Indigenous women and girls in Australia.¹²⁰

Incarceration

Aboriginal and Torres Strait Islander peoples are the most incarcerated people on earth, with the adult imprisonment of Aboriginal and Torres Strait Islander Australians equivalent to 2,253 per 100,000 adults. This is higher even than African Americans in the United States (1,745 per 100,000).¹²¹ While Aboriginal and Torres Strait Islander peoples make up about 30 per cent of the Northern Territory population, they make up 84.9 per cent of the prison population as at December 2020 and averaged 83.8 per cent of the prison population

110 Average years of schooling estimated from reported highest level of schooling. 'Year 12' and further studies was taken to indicate 13 years of schooling; 'Year 11' indicated 12 years; 'Year 10' indicated 11 years; where applicable, 'Year 9' indicated 10 years; where applicable, 'Year 9 or below' and 'Year 8 or below' were estimated to average at seven years of schooling; 'Did not go to school' was taken to mean 0 years of schooling. Highest qualifications at Certificate III level and were taken as equivalent to year 12, as in COAG 2020 targets from 'Report on performance 2016'. Source: ABS, 'Quickstats' and 'Aboriginal and/or Torres Strait Islander Peoples Quickstats', cat. No 2002.0 for Greater Darwin (Code 701), Northern Territory (Code 7) and Australia (Code 0).

111 ABS (2017), 'General Community Profile'; ABS (2017), 'Aboriginal and Torres Strait Islander Peoples Profile for the Greater Darwin GCCSA'

112 ABS (2017), 'General Community Profile'; ABS (2017), 'Aboriginal and Torres Strait Islander Peoples Profile for the Greater Darwin GCCSA'

113 National Indigenous Australians Agency (2018), 'National Partnership for Remote Housing Northern Territory'

114 A person may be counted as both living in an overcrowded home and homeless, for example, when 'couch surfing'. Indigenous Australians Agency (2018), 'National Partnership for Remote Housing Northern Territory'

115 Northern Territory Government (2021), 'Public housing waiting list', accessed 7 April 2020

116 Note: as legal regimes are different across jurisdictions, one regime may impose harsher sentences than others, resulting in a slight discrepancy in the rate of offences. Age standardised rates used to reflect different age structure of Aboriginal populations. ABS (2021), 'Recorded Crime – Offenders', Table 23, cat. No. 4519.0

117 ABS (2021), 'Recorded Crime – Offenders', Tables 22 and 25, cat. No. 4519.0

118 Australian Indigenous Health Bulletin (2018), 'Review of the harmful use of alcohol among Aboriginal and Torres Strait Islander people'

119 ABS (2017), 'National Aboriginal and Torres Strait Islander Social Survey, 2014–15', Summary results for States and Territories, cat. No. 4714.0

120 Council of Australian Governments (2014), 'National Plan to Reduce Violence against Women and their Children 2010–2022'

121 Among populations for which data is available. Noel Pearson (2017), 'FactCheck Q&A: are Indigenous Australians the most incarcerated people on Earth?'

from 2010–2020.¹²² Aboriginal and Torres Strait Islander peoples in the Northern Territory also spend 5.8 times more time in prison compared to their non-Indigenous counterparts. This multiple is even wider nationally, with Aboriginal and Torres Strait Islander peoples expected to spend more than 10 times as many years in prison per person. The number of Aboriginal and Torres Strait Islander people imprisoned has increased by 100 per cent since the final report of the Royal Commission into Aboriginal Deaths in Custody was published in 1991.¹²³

Uluru Statement from the Heart excerpt

“Proportionally, we are the most incarcerated people on the planet. We are not an innately criminal people. Our children are alienated from their families at unprecedented rates. This cannot be because we have no love for them. And our youth languish in detention in obscene numbers. They should be our hope for the future.

These dimensions of our crisis tell plainly the structural nature of our problem. *This is the torment of our powerlessness.*”

– *Uluru Statement from the Heart (2017)*

From 2007 to 2017 (the most recent release), Darwin Correctional Centre’s share of the Northern Territory’s prison population increased 6 percentage points. By 2017, the centre accounted for 60.7 per cent of the Northern Territory’s prison population, sentenced and unsentenced, roughly in line with Darwin’s share of the population. However, at 30 June 2017, 78.4 per cent of its prisoners were made up of Aboriginal and Torres Strait Islander peoples.¹²⁴ While Darwin’s share of property offences has fallen 8 percentage points from 2013–2020, leading to a decrease in the Darwin’s share of criminal offences, the city’s prisons have never been busier – in early 2018, the 1,052-bed prison was 3 per cent over capacity.¹²⁵

Care and child protection

Aboriginal and Torres Strait Islander children are far more likely to be subject to neglect or abuse and are consequently far more likely to be placed in out-of-home care than non-Indigenous children. Substantiated allegations of abuse, neglect or risk of harm to Aboriginal and Torres Strait Islander children have involved 56.2 per 1,000 Aboriginal or Torres Strait Islander children in the Northern Territory. This is higher than the national rate for Aboriginal and Torres Strait Islander children of 42 per 1,000 and the non-Indigenous rate in the Northern Territory of 6.6 per 1,000.¹²⁶ Aboriginal and Torres Strait Islander children are also 11.2 times more likely to be in out-of-home care (such as residential care, a group home, foster care or kinship care) compared to non-Indigenous children. This amounts to 35.6 of every 1,000 Aboriginal or Torres Strait Islander children, compared to just 3.2 of every 1,000 non-Indigenous children.¹²⁷ And these are all only reported data. The actual rates are likely to be higher.

Juvenile detention

Too often, those in the child protection system transition to the youth justice system. Almost half (45 per cent) of the children in youth detention were also involved in the child protection system in the same year, compared to under 2 per cent of children in the general population. Research conducted by the Menzies School of Health Research for the Royal Commission into the Detention and Protection of Children in the Northern Territory showed that 75.2 per cent of Aboriginal and Torres Strait Islander youth offenders convicted of a crime had previously been reported to child protection.¹²⁸ As of 29 March 2021, 98 per cent of juveniles in detention in the Northern Territory were Aboriginal and Torres Strait Islanders.¹²⁹

Tackling entrenched disadvantage

Given the above, it is clear that Aboriginal and Torres Strait Islander peoples face exceptional disadvantage. But it is important to note that the issues pervading Aboriginal and Torres Strait Islander communities, from education and housing to child protection and incarceration are inextricably linked, adding to the complexity of closing the gap.

¹²² ABS (2021), ‘*Corrective Services, Australia, Time Series, June quarter 2007 to December quarter 2020*’

¹²³ Stan Grant, ABC News, ‘Aboriginal deaths in custody reflect the poor health of Australia’s democracy’, 18 April 2021

¹²⁴ Department of the Attorney-General and Justice (2018), ‘*NT Correctional Services Annual Statistics 2016–2017*’. The most recent annual statistics from the Northern Territory Correctional Services, which break down the composition of the Northern Territory prison population by age, employment, Aboriginal and Torres Strait Islander peoples, gender, marital and sentence status, was for the 2016–17 period (periods follow financial years, from 1 July to 30 June)

¹²⁵ Felicity James, ABC News, ‘*Northern Territory prisons at record levels of overcrowding*’, 13 February 2018; Northern Territory Government (2020), ‘*Darwin Correctional Centre*’, accessed 31 March 2021; NT Police (2020), ‘*NT Crimes December statistical publication*’

¹²⁶ Allegations received in 2017–18. Australian Institute of Family Studies (2020), ‘*Child protection and Aboriginal and Torres Strait Islander children – CFCA Resource Sheet*’, Table 1

¹²⁷ Data as at June 30 2018. Australian Institute of Family Studies (2020), ‘*Child protection and Aboriginal and Torres Strait Islander children – CFCA Resource Sheet*’, Table 2

¹²⁸ Royal Commission into the Detention and Protection of Children in the Northern Territory (2017), ‘*Final Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory*’, Vol. 1, pp. 31–32

¹²⁹ Northern Territory Government (2021), ‘*Youth detention census*’, Average daily number in detention – by Aboriginal and Torres Strait Islander status, accessed 8 April 2021

“To effectively tackle entrenched and extreme disadvantage and Close the Gap in terms of suicide, child removal, incarceration, poor education, youth sexual violence and abuse, poor health and lack of employment – alcohol and other substance abuse must be tackled. Alcohol is not the sole driver of Indigenous disadvantage. A comprehensive strategy is needed, the focus cannot be on alcohol alone. But tackling the problems caused by alcohol is fundamental and it must remain a top priority.”

- Zoe Ellerman, former Head of Policy, Cape York Institute (13 March 2021)

4.5 Health outcomes for Aboriginal and Torres Strait Islander Territorians

Nationally, health outcomes for Aboriginal and Torres Strait Islander Australians are much worse than for the general population. Excessive alcohol consumption is a material contributor to poor health outcomes and the other issues discussed in this chapter.

For Aboriginal and Torres Strait Islander men, life expectancy is 71.6 years, compared to 80.2 years for non-Indigenous men.¹³⁰ For Aboriginal and Torres Strait Islander women, life expectancy is 75.6 years, compared to 83.4 years for non-Indigenous women. The picture is even starker in the Northern Territory, where life expectancy for Aboriginal and Torres Strait Islander peoples is the lowest in Australia: 66.6 years for men and 69.9 years for women.¹³¹ For Aboriginal and Torres Strait Islander women, this amounts to 12.8 fewer years of life (compared to non-Indigenous women in the Territory), which is even wider than the national gap of 7.8 years. The Panel is informed that all of those statistics are worse in remote areas of the Northern Territory.

Aboriginal and Torres Strait Islander peoples in the Northern Territory also have a much higher rate of chronic disease compared to the general population. They have a 53.1 per cent likelihood of having one or more chronic or long-term diseases, compared

to 39 per cent of the non-Indigenous population in the Northern Territory.¹³² This includes 11 per cent who have diabetes, compared to 5.5 per cent of the non-Indigenous population. Additionally, 3.7 per cent have kidney disease, compared to 1.5 per cent of the general Northern Territory population. Rates of smoking have decreased among Aboriginal and Torres Strait Islander peoples around Australia since 1994. But in the Northern Territory, they remain twice as likely to smoke as non-Indigenous Territorians. These conditions and risks, which are also present among the national population, contribute to 429.4 years lost for every 1,000 Aboriginal or Torres Strait Islander people due to premature death or living with disease or injury, compared to 185.0 years for the rest of the population.¹³³

Mental health is a significant challenge for Aboriginal and Torres Strait Islander communities in the Northern Territory. Aboriginal and Torres Strait Islander peoples are 50 per cent more likely than the general population to have a mental illness or behavioural problem, with 15.9 per cent experiencing some form of depression, anxiety or other behavioural issue.¹³⁴ In 2017–18, 7.5 per cent of Aboriginal and Torres Strait Islander Territorians experienced depression and 10.7 per cent had anxiety-related problems.¹³⁵

In the Northern Territory, suicide rates for Aboriginal and Torres Strait Islander peoples are 25.6 per 100,000, which is higher than the national rate for Aboriginal and Torres Strait Islander peoples (24.6 per 100,000).¹³⁶ Suicide is also the leading cause of death for Aboriginal and Torres Strait Islander children nationally. This has been an enduring concern in the Northern Territory since the ‘Gone too soon’ report into youth suicide in the Northern Territory, which noted a youth suicide rate that was 3.5 times the national average in 2012.¹³⁷ Many factors contribute to the higher rate, including the remote nature of much of the Aboriginal and Torres Strait Islander population, low availability of psychosocial support and the percentage of people who fall into high-risk categories.¹³⁸

¹³⁰ Australian Institute of Health and Welfare (2020), ‘Indigenous life expectancy and deaths’

¹³¹ Australian Government (2020), ‘Closing the Gap Report 2020 – Life Expectancy’, accessed 10 March 2020

¹³² ABS (2020), ‘National Aboriginal and Torres Strait Islander Health Survey, Australia, 2018–19’, Table 3.3, cat. No. 4715.0; ABS (2018), ‘National Health Survey: First Results, 2017–18 – Northern Territory’, Tables 1.3 and 3.3

¹³³ Age standardised rates used. Australian Institute of Health and Welfare (2016), ‘Australian Burden of Disease Study: impact and causes of illness and death in Aboriginal and Torres Strait Islander people 2011’

¹³⁴ ABS (2020), ‘National Aboriginal and Torres Strait Islander Health Survey, Australia, 2018–19’, Table 3.3, cat. No. 4715.0

¹³⁵ ABS (2018), ‘National Health Survey: First Results, 2017–18 – Northern Territory’, Table 3.3

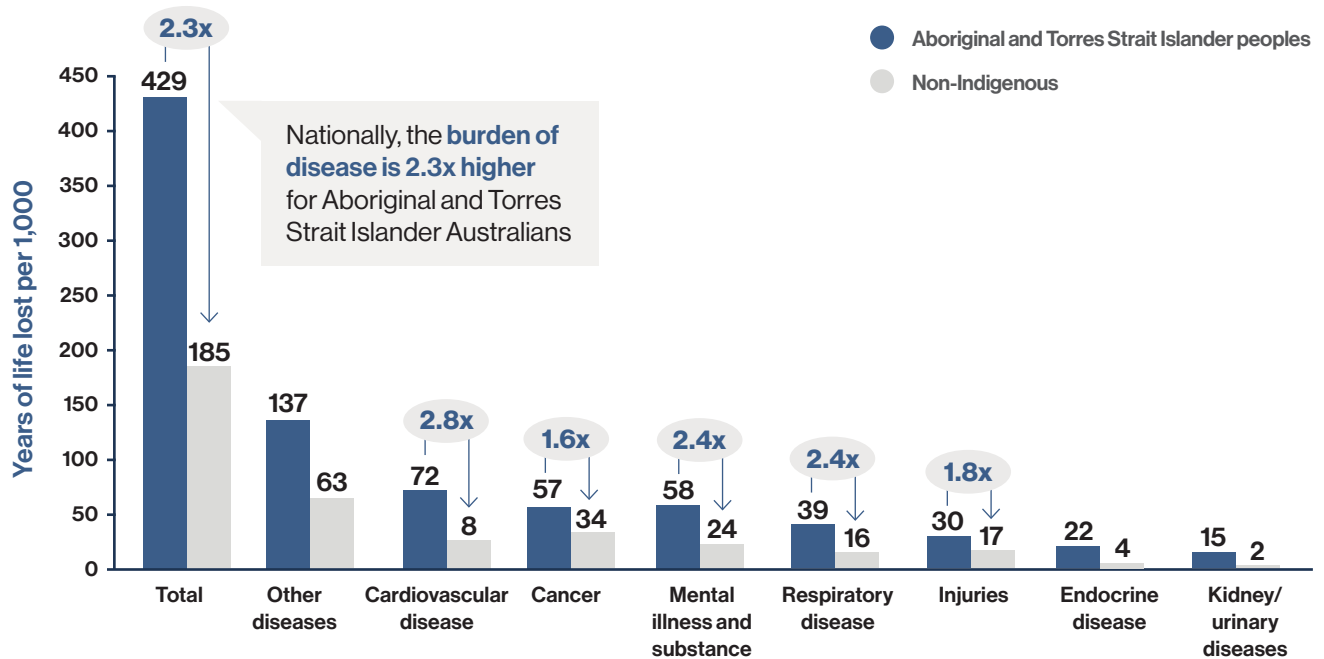
¹³⁶ ABS (2020), ‘Causes of Death, Australia 2019’

¹³⁷ Marion Scrymgour et al. (2020), ‘Gone too soon: A report into youth suicide in the Northern Territory’

¹³⁸ Suicide Prevention Australia (2011), ‘Northern Territory Inquiry into Youth Suicide Submission’

Exhibit 16:

Disability adjusted life years lost per 1,000 people due to the burden of disease



Source: Australian Institute of Health and Welfare (2011), 'Impact and causes of illness and death in Aboriginal and Torres Strait Islander people', Table 2.2: Summary of findings on the leading causes of the gap in disease burden between Indigenous and non-Indigenous Australians in 2011

4.6 The Bagot, Kulaluk and Minmarama Park communities

The Bagot, Kulaluk and Minmarama Park communities warrant specific attention in this report, given their proximity to the proposed Dan Murphy's Darwin development. The locations of these communities can be seen in the 'Detailed view of proposed site'.

It is also important to note that the vast majority of Aboriginal and Torres Strait Islander people in the Greater Darwin region live throughout the various suburbs of Darwin and Palmerston. Families also live in what are sometimes referred to as 'town camps', including at locations such as One Mile Dam, Knuckey Lagoon, Palmerston Indigenous Village and the Fifteen Mile. There are 20 or more long grass camps in and around Darwin.

Darwin's Aboriginal and Torres Strait Islander population is not homogenous and, apart from the Larrakia Traditional Owners, is comprised of many other cultural and/or language groups from across the Northern Territory and elsewhere. The continuing effects of colonisation are also relevant in this context,

including for those families seriously affected by the experiences of the 'stolen generations' and the culturally diverse nature of Darwin's population.

Bagot community

The Bagot community is located in central Darwin, to the west of Darwin International Airport on Bagot Road. It is made up of 60 houses and has 180–250 permanent residents. It was known as the Bagot Aboriginal Reserve when it was established in 1938 to replace a site for child separations, the Kahlin Compound. Before 1964, Aboriginal and Torres Strait Islander people temporarily living in Darwin had to stay at the Bagot Aboriginal Reserve.¹³⁹ The *Social Welfare Ordinance 1964* lifted these restrictions. Bagot became self-governing in 1979.

The Bagot Community Council was recognised as the local authority until 2015, when it was placed into government administration. Currently, a Bagot Community Advisory Group represents residents in relation to the administrators and Yilli Rreung Housing Aboriginal Corporation.¹⁴⁰

139 Bill Day (2012), 'Aboriginal People of Darwin: the Bagot Community'

140 Northern Territory Government (2017), 'Living on the edge – Northern Territory Town Camps Review', p. 854–868

4. BACKGROUND ON THE NORTHERN TERRITORY AND DARWIN

The law prohibits bringing, possessing, consuming or selling alcohol in the Bagot community area. This was introduced during the Northern Territory Emergency Response (also known as the 'Northern Territory Intervention') in 2007 and remains in force under the Stronger Futures in the Northern Territory legislation. However, alcohol-related problems are rife in the Bagot community, particularly during fluctuations in population when family and other groups visit from out of town. Various stakeholders informed the Panel that public disturbances, violence, domestic violence, vehicle accidents and incarceration are all too common among community members and their families.

Kulaluk and Minmarama Park communities

The Kulaluk and Minmarama Park communities are located to the west of the Bagot community, and extend from north of Coconut Grove to south of Ludmilla. Kulaluk is home to about 52 Aboriginal and Torres Strait Islander people, and Minmarama Park is home to about 120 Aboriginal and Torres Strait Islander people. From 1971, the communities pushed for recognition and self-determination over their land, in an effort led by community leader Bobby Secretary. In 1979, the Kulaluk special purpose lease – the first land title handed back to Traditional Owners within an Australian capital city – was granted to the Gwalwa Daraniki Association. Both the Kulaluk and Minmarama Park communities are included on this title.

Importantly, Gwalwa Daraniki Association has made a commitment to using the land to secure an income stream for the community. A heritage application lodged in 2015 was rejected in 2016 (and upheld in 2017), paving the way for light industrial development.¹⁴¹ Plans for development of further permanent housing, including as a transitional residence for out-of-country Aboriginal and Torres Strait Islander people, are currently underway.

In 2007, Kulaluk applied to have the community declared a dry zone to combat alcohol-related violence and anti-social behaviour. The Licensing Commission agreed. This arrangement remains in effect under the *Liquor Act 2019* (NT) (*Liquor Act 2019*). The Gwalwa Daraniki Association has also put into effect an alcohol management plan, which has allowed community leaders to better control alcohol related behaviours within the communities.

¹⁴¹ Jacqueline Breen, ABC News, 'Northern Territory Planning Minister declines to list Darwin's Aboriginal land as heritage site', 29 April 2016

5

Alcohol Consumption in the Northern Territory

The Northern Territory has the highest rate of alcohol consumption in Australia, and a much higher share of the population drinks at risky levels compared to the Australian average. While a high number of Aboriginal and Torres Strait Islanders do not drink at all, they experience a disproportionate level of harm from alcohol. The relationship between the opening of alcohol stores and the rate of alcohol-related harm in the community is vigorously contested by Endeavour and various academic experts. However, it is clear that the Northern Territory has a serious and ongoing problem with alcohol-related harm. The health costs are evident, with the Northern Territory experiencing dramatically higher rates of alcohol-related hospitalisations and deaths compared to other states and territories. The financial costs to Darwin and the Northern Territory Government from these harms are also acute. Given the demonstrable health and economic costs, it is clear that the level of alcohol-related harm requires urgent and meaningful attention.

5.1 Alcohol consumption in the Northern Territory

The Northern Territory has the highest consumption of alcohol per capita of any state or territory in Australia.¹⁴² As of 2019, the average Northern Territorian consumes the equivalent of 10.72 litres of pure alcohol each year, compared to the Australian average of 9.51 litres.¹⁴³ Residents of the Northern Territory also drink approximately 27 per cent more regularly than other Australians.¹⁴⁴

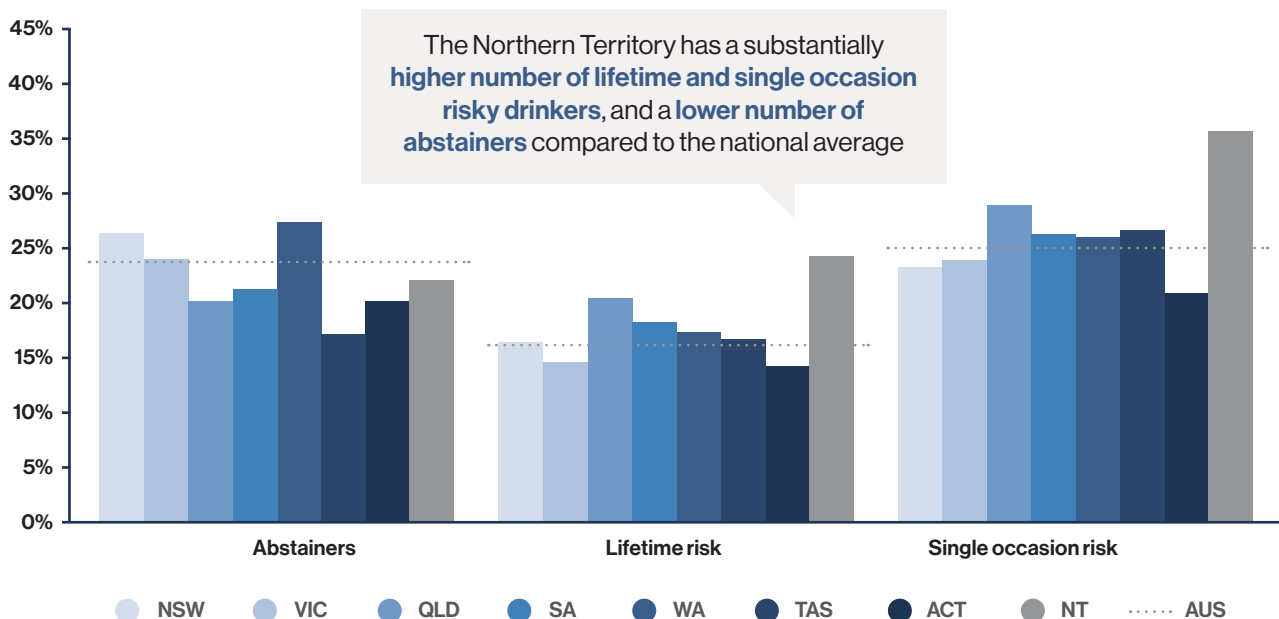
Not only is overall consumption higher in the Northern Territory than the rest of Australia, but so too is the proportion of drinkers who exceed health risk guidelines. 24 per cent of the Northern Territory's population faces a lifetime health risk, which is 1.4 times greater than the Australian population.¹⁴⁵ Lifetime health risk is defined as the consumption of two or more standard drinks per day. 35 per cent of Northern Territorians are also likely to exceed single

occasion risk guidelines, defined as the consumption of four or more standard drinks in one instance. This is substantially higher than the Australian average of 25 per cent. However, the Northern Territory has a slightly greater proportion (22 per cent) of abstainers than a number of other Australian states and territories.

While the level of drinking in the Northern Territory continues to be high, it is worth noting that alcohol consumption is declining across Australia in general.¹⁴⁶ In 2019, the average Northern Territory resident drank 2.35 standard drinks a day compared to 2.92 in 2012; this compares to the Australian average of 2.08 drinks per day in 2018 (according to the most recent data), compared to 2.22 drinks in 2012. Northern Territory residents are also drinking alcohol less frequently. In 2019, they drank an average of 55 days a year compared to 60 days in 2012 (nationally, Australians drank 44 days in 2019 compared to 51 days in 2012).¹⁴⁷

Exhibit 17:

Percentage of 14+ population by drinking status and State



Source: Australian Institute of Health and Welfare (2020), 'Alcohol, tobacco & other drugs in Australia', Interactive data - Table 4: Lifetime and single occasion alcohol risk status, by age group and state/territory from 2001 to 2019 (per cent)

142 Northern Territory Government (2017), 'Alcohol Policies and Legislation Review (Riley Review)' p. 1

143 Northern Territory Government and ABS estimates from wholesale supply data; Department of Industry, Tourism and Trade (2019), 'Northern Territory Wholesale Alcohol Supply Report 2012 to 2019'; ABS (2019), 'Apparent Consumption of Alcohol, Australia 2017-18 financial year'

144 Frequency was calculated by annualising the proportion of the population that consumes alcohol based on the reported figures in the Australian Institute of Health and Welfare National Drug Strategy Household Survey, 2018

145 Australian Institute of Health and Welfare (2020), 'Alcohol, tobacco & other drugs in Australia', Proportion of population older than 14 years exceeding NHMRC guidelines for lifetime risk from alcohol consumption

146 Department of Industry, Tourism and Trade (2019), 'Northern Territory Wholesale Alcohol Supply Report 2012 to 2019'; ABS (2019), 'Apparent Consumption of Alcohol, Australia 2017-18 financial year'

147 Northern Territory Health, 'Banned Drinkers Register Monthly Reports', June 2018-2020 and December 2018-2020

Drinking patterns among Aboriginal and Torres Strait Islander peoples in the Northern Territory

While it is difficult to be accurate in relation to alcohol consumption in Darwin and the Northern Territory, the Panel has included the following Australian Bureau of Statistics and Australian Institute of Health and Welfare data.

Of Aboriginal and Torres Strait Islander Territorians aged 18 and over, 43.9 per cent did not consume alcohol in the previous 12 months or had never drunk alcohol. This is more than double the abstention rate in the Northern Territory overall. As a direct result, Aboriginal and Torres Strait Islander Territorians are less likely than the overall Northern Territory population to exceed risky drinking guidelines. In all, 42.3 per cent of Aboriginal and Torres Strait Islander people aged 18 and over exceed single occasion risk guidelines (as defined above), compared to 49.1 per cent of Territorians overall. In all, 12.7 per cent of Aboriginal and Torres Strait Islander Territorians exceed lifetime risk guidelines, compared to 21.4 per cent of Territorians overall.¹⁴⁸

Despite the greater percentage of Aboriginal and Torres Strait Islander people abstaining from alcohol compared to the rest of the population, those who do consume alcohol do so at riskier levels. Only 15.9 per cent of Aboriginal and Torres Strait Islander Territorians did not exceed lifetime risky drinking guidelines, compared to 34.1 per cent of Territorians overall. Further, only 10.8 per cent of Aboriginal and Torres Strait Islander Territorians did not exceed single occasion risky drinking guidelines, compared to 29.6 per cent of all Territorians.¹⁴⁹

Regulation and sale of alcohol in the Northern Territory

Liquor can be purchased in the Northern Territory for in-house consumption or for takeaway purposes. The *Liquor Act 2019* provides for 22 types of liquor licences, referred to as 'authorities'.¹⁵⁰ The conditions specific to each authority are set out in regulation.

A wholesaler of liquor must register as such with Licensing NT¹⁵¹ and an interstate retailer's licence is required to sell liquor from a place outside the Territory for delivery to a person or location in the Territory.¹⁵²

The Northern Territory has a higher proportion of liquor licences per 1,000 people compared to the rest of Australia. There are 658 licensed outlets in the Northern Territory, which includes packaged liquor, bars, cafes and restaurants, clubs, community centres and other venues, amounting to approximately 3 outlets per 1,000 people compared to an estimated 2.6 outlets per 1,000 people in Australia.¹⁵³ In Darwin City on its own, there are about 17 licences per 1,000 people.¹⁵⁴

5.2 Contested views of alcohol-related harm

Before reviewing alcohol-related harms and impacts, it is important to note that key Endeavour personnel interviewed by the Panel strongly believe there is a weak or non-existent relationship between the density of licensed liquor retail outlets (including large-format liquor stores such as Dan Murphy's) and alcohol-related harm. Endeavour cites two pieces of evidence, among others. The first is a 2017 study from the National Drug Research Institute at Curtin University on the impact of two large-format liquor stores in Western Australia (one metropolitan and one regional).¹⁵⁵ This study found that the liquor superstores had a minimal impact on alcohol-related harm indicators, though the authors noted a number of limitations to the study's application in other contexts.

The second piece of evidence relates to a contested application to open a Dan Murphy's store in Cranbourne East in Victoria. Opponents of the application noted the store was in a domestic violence 'hotspot' and asserted that it would lead to an increase in the rates of domestic violence in the local community. Since the store opened in December 2016, the rates

148 Percentage of population aged over 18, 2018–19 for Aboriginal and Torres Strait Islander Territorians, 2017–18 for all Territorians. ABS (2020) 'National Aboriginal and Torres Strait Islander Health Survey, Australia, 2018–19', Table 3.3, cat. No. 4715.0; ABS (2019), 'National Health Survey: First Results, 2017–18 — Northern Territory', Table 1.3

149 Percentage of population aged over 18, 2018–19 for Aboriginal and Torres Strait Islander Territorians, 2017–18 for all Territorians. ABS (2020) 'National Aboriginal and Torres Strait Islander Health Survey, Australia, 2018–19', Table 3.3, cat. No. 4715.0; Australian Institute of Health and Welfare (2020), 'National Drug Strategy Household Survey 2019', Table 1.7: Proportion of daily smokers, risky drinkers and people who have used illicit drugs, people aged 14 and over, by state and territory, 2013 to 2019 (per cent)

150 Section 47 of the *Liquor Act 2019* (NT)

151 Section 32 of the *Liquor Act 2019* (NT)

152 Section 44 of the *Liquor Act 2019* (NT)

153 Northern Territory Government Department of Industry, Tourism and Trade (2021), 'Public register of licensees', accessed 26 April 2021; Liquor & Gaming NSW (2021), 'Premises list as at March 2021', accessed 19 March 2021; Victorian Commission for Gambling and Liquor Regulation (2021), 'Victorian Liquor Licences as at 28 Feb 2021', accessed 11 March 2021; ACT Government Access Canberra (2021), 'Occupational licences: Liquor – Catering, Club, General, Off, On and Special', accessed 26 April 2021; Queensland Government Office of Liquor and Gaming Regulation (2020), '2019–20 Liquor and gaming statistical report', accessed 17 March 2021; Government of South Australia Attorney-General's Department (2019), 'Liquor and Gaming licences as at August 2019', accessed 11 March 2021; Tasmanian Government Department of Treasury and Finance (2021), 'Liquor licence latest report as at 8 Jan 2021', accessed 11 March 2021; Government of Western Australia Racing, Gaming and Liquor (2021), 'Find a Licence', accessed 31 March 2021; ABS (2020), 'National, state and territory population', Table 6. Population by Age and Sex - States and Territories, cat. no 3101.0; Accenture analysis (2021). Note: Figures derived from public registers of liquor licence data. Includes packaged liquor and licensed venues.

154 Darwin City is a Statistical Area Level 2 region, comprising the central business district of Darwin

155 Tanya Chikritzhs, Wenbin Liang and William Gilmore (2017), 'Investigating the Impact of Liquor Superstores in Western Australia', *National Drug and Research Institute, Curtin University*

of domestic violence have not increased, a claim supported by Victorian Police data prior to 2020.¹⁵⁶

Numerous public health researchers and advocates vigorously contest Endeavour's claims. For example, a longitudinal study of the relationship between alcohol outlet density and domestic violence in metropolitan Melbourne found that a 10 per cent increase in off-licence liquor outlets was associated with a 3.3 per cent increase in family violence.¹⁵⁷ The study found the effects were particularly large for packaged liquor stores. Another study conducted in New Zealand found a positive relationship between the density of off-licence liquor retailers and alcohol-related harms.¹⁵⁸ There is also evidence that higher alcohol sales volumes in takeaway outlets are associated with increases in violent assaults in both homes and on-premises venues.¹⁵⁹ Further, local-level data from Northern Territory Police shows that the 5-kilometre radius surrounding the original proposed site on Bagot Road already experiences up to double the rate of alcohol-related crime compared to other parts of Darwin.¹⁶⁰

It is clear the relationship between alcohol outlets and harm is not straightforward. However, the more fundamental differences of opinion between Endeavour and public health researchers and advocates stems from their views on the mitigation of alcohol-related harms. Several Endeavour personnel interviewed by the Panel noted that a Dan Murphy's development would embody best practice in the sale of alcohol. They believe that a possible outcome of Endeavour's higher standards of customer service and responsibility in relation to a Dan Murphy's store in Darwin could be a reduction in trade for less reputable competitors making them unviable in the long-term, thereby reducing the level of harm to the community overall. Further, Endeavour sees these harms as being mitigated through innovations at the point of sale, as well as other safety measures around the proposed store.

Public health researchers and advocates interviewed by the Panel see alcohol-related harms mainly as a society-wide public health issue. Instead of a focus on responsible service protocols and store safety measures, mitigating alcohol-related harm requires "greater investment... to protect the health and wellbeing of families and communities".¹⁶¹ In this view, the opening of a Darwin Dan Murphy's store has the potential

to increase already high levels of trauma and social disadvantage, regardless of how responsibly that alcohol is sold. As some public health experts have noted, if a Dan Murphy's store opens in Darwin, then "the Northern Territory community will be left to clean up the mess".¹⁶²

"Alcohol advertising conveys the message that if you drink alcohol you will be sexy, a better fisherman and attract sexual partners. It promotes harmful ideas on how to relax or deal with frustrations. It conveys almost nothing on the harmful effects, particularly during pregnancy."

- Associate Professor Suzanne Belton, President, Northern Territory Branch of the Public Health Association of Australia (8 March 2021)

The Panel does not wish to arbitrate between these opposing views on the evidence and appropriate responses. It is, however, appropriate to note the deep issues of alcohol-related harm facing the Northern Territory.

Various stakeholders expressed the sentiment to the Panel that the producers and retailers of alcohol, owners of licensed premises, developers, business and tourism operators together have the power to shape alcohol policy and institutional frameworks that benefit them. Too often, the public discourse around alcohol consumption is framed as threats to 'urban amenity' and 'law and order' but not primarily as a public health issue that is 'harmful to drinkers and their families'. In the process, responsibility for the policy problems is placed on drinkers and not on those involved in the alcohol supply chain.

At this point, the Panel also wishes it to be strongly noted that the history and circumstances that have led to the wholly unacceptable and dangerous levels of alcohol abuse and the consequential social dysfunction is not through any inherent fault or flaw of the Aboriginal and Torres Strait Islander peoples of the Northern Territory. There is a view of some in the community that Aboriginal and Torres Strait Islander disadvantage is intractable and that First Nations peoples must bear full

¹⁵⁶ Crime Statistics Agency (2020), 'Family Incidents, Other Parties and Affected Family Members'

¹⁵⁷ Michael Livingston (2011), 'Alcohol outlet density and harm: comparing the impacts on violence and chronic harms', *Addiction*, p. 919–925

¹⁵⁸ Jennie Connor, Kypros Kyri, Melanie Bell and Kimberley Cousins (2011), 'Alcohol outlet density, levels of drinking and alcohol-related harm in New Zealand: a national study', *Journal of Epidemiology and Community Health*; p. 841–846

¹⁵⁹ Wenbin Liang and Tanya Chikritzhs (2011), 'Revealing the link between licenced outlets and violence: Counting venues versus measuring alcohol availability', *Drug and Alcohol Review*, 30, 5: 524–35; Cassandra J. C. Wright, Sarah Clifford, Mia Miller, Peter D'Abbs, Caterina Giorgi, Meredythe Crane & James A. Smith (2021) 'Editorial: While Woolworths reaps the rewards, the Northern Territory community will be left to clean up the mess', *Health Promotion Journal of Australia*, p. 1–5.

¹⁶⁰ Cassandra J. C. Wright, Sarah Clifford, Mia Miller, Peter D'Abbs, Caterina Giorgi, Meredythe Crane and James A. Smith (2021), 'Editorial: While Woolworths reaps the rewards, the Northern Territory community will be left to clean up the mess', *Health Promotion Journal of Australia*, p. 1–5.

¹⁶¹ Cassandra J. C. Wright, Sarah Clifford, Mia Miller, Peter D'Abbs, Caterina Giorgi, Meredythe Crane and James A. Smith (2021), 'Editorial: While Woolworths reaps the rewards, the Northern Territory community will be left to clean up the mess', *Health Promotion Journal of Australia*, p. 1–5

¹⁶² Cassandra J. C. Wright, Sarah Clifford, Mia Miller, Peter D'Abbs, Caterina Giorgi, Meredythe Crane and James A. Smith (2021), 'Editorial: While Woolworths reaps the rewards, the Northern Territory community will be left to clean up the mess', *Health Promotion Journal of Australia*, p. 1–5

responsibility for their status without any compromise to the requirements and wishes of the non-Indigenous population. The Panel rejects that perspective.

5.3 Alcohol-related harms and impacts

Health impacts of alcohol consumption

Excessive alcohol consumption can lead to health complications that vary in severity and range from alcohol dependence and mental disorders to injuries and poisonings, and chronic diseases of the heart, liver and respiratory systems.

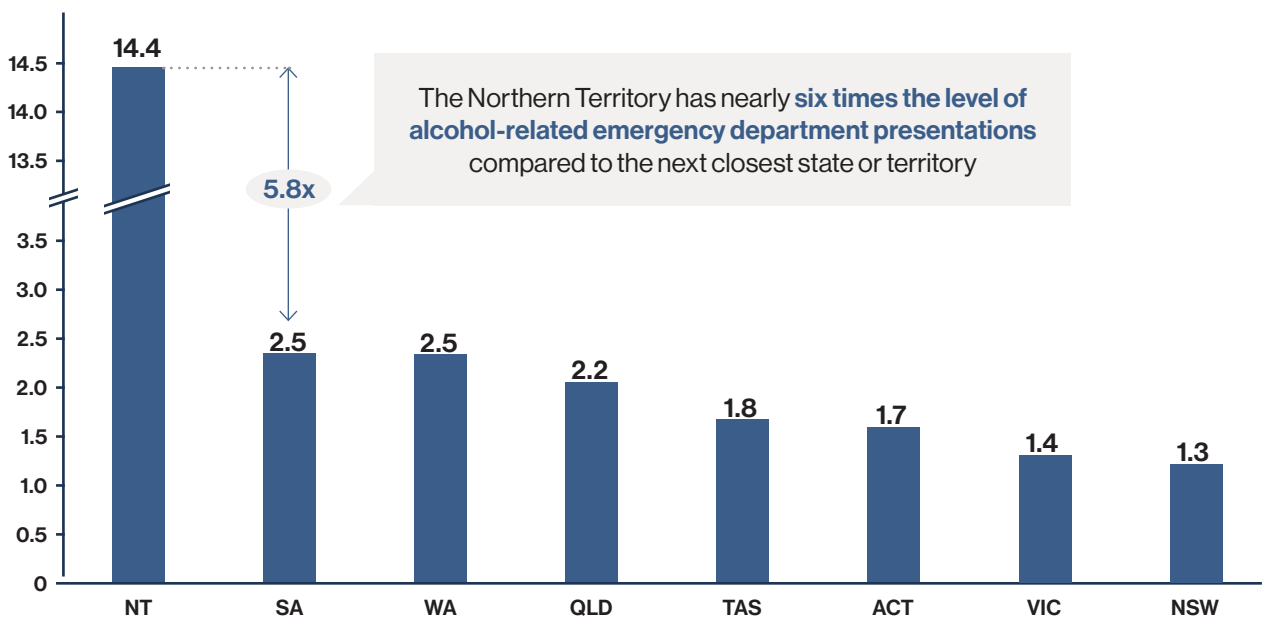
In the Northern Territory, alcohol-related emergency department presentations are almost six times greater than other states and territories, per 1,000 population.¹⁶³ This is driven largely by the Royal Darwin Hospital and the Alice Springs Hospital. Together, these hospitals manage approximately 69 per cent of all emergency department presentations in the Northern Territory.

This translates to approximately 41.1 emergency department presentations per 1,000 population.¹⁶⁴

More broadly, alcohol-related violence is the most common cause of hospital admission for injury in the Northern Territory. In a sample of 248 patients admitted to the Royal Darwin Hospital for interpersonal violence, 174 provided incontrovertible evidence of alcohol intake – that is, 70.6 per cent.¹⁶⁵ Since 2015, the number of alcohol-related assaults annually in the Northern Territory has increased from 3,677 to 4,049.¹⁶⁶ Notably, the proportion of these assaults that involve domestic violence has increased 5 percentage points to 69 per cent in 2020. This represents an additional 440 instances of domestic violence. Overall, approximately 51.5 per cent of all assaults in the Northern Territory are associated with alcohol. In Darwin, this figure is more pronounced, with 56.5 per cent of all assaults being associated with alcohol.

Exhibit 18:

Number of alcohol-related emergency department presentations by State and Territory per 1,000 population in 2016-17



Source: Australian Institute of Health and Welfare and Deloitte Access Economics (2018), 'Alcohol related Emergency Department presentations', Figure 2.5 - ED presentations by category per 1,000 population and by jurisdiction in 2016-17

163 Australian Institute of Health and Welfare (2018), 'Alcohol, tobacco & other drugs in Australia'

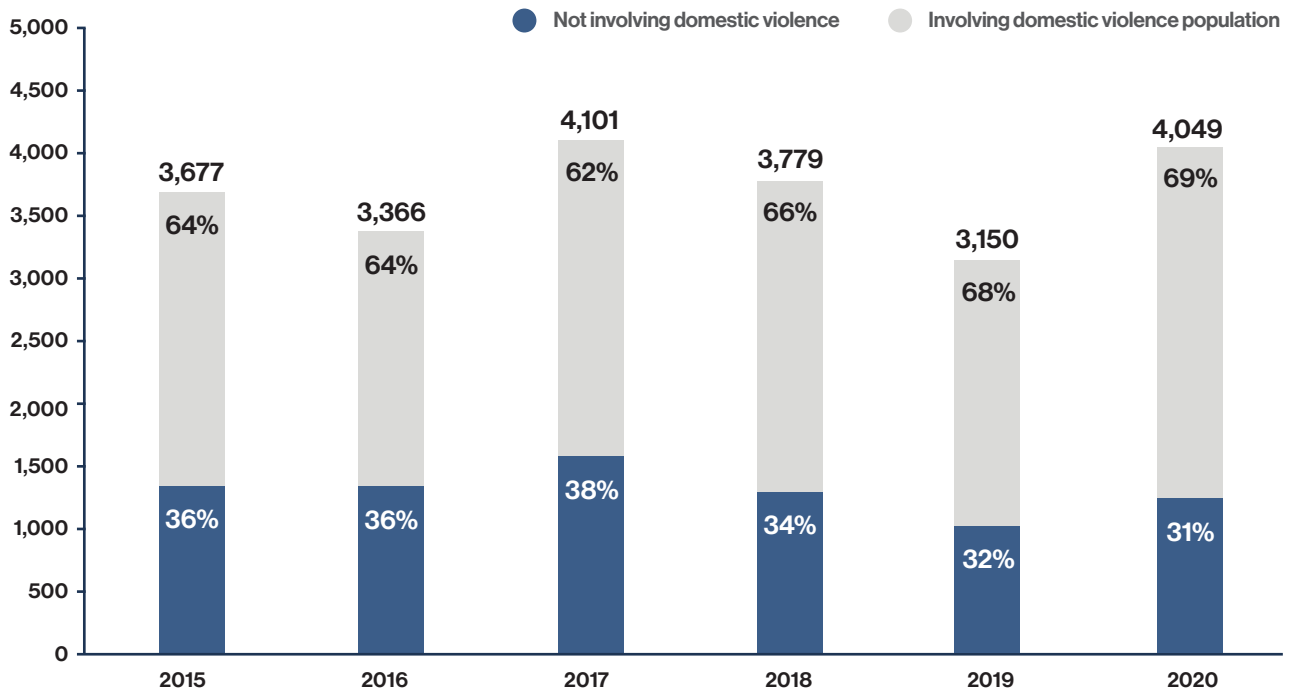
164 Note: this does not take into account the fact that these hospitals may be hubs for emergency presentations, and a proportion of these presentations may come from more regional and remote locations

165 Alexander Lim and Kathleen McDermott (2019), 'Interpersonal violence and violent re-injury in the Northern Territory', *Australian Journal of Rural Health*

166 Northern Territory Police, Fire and Emergency Services (2021), 'Northern Territory Crime Statistics'

Exhibit 19:

Number of alcohol-related assaults involving domestic violence in the Northern Territory



Source: Northern Territory Police, Fire and Emergency Services (2021), 'Statistical Publications'

Incidence of alcohol-related facial trauma in the Northern Territory

A common feature of alcohol-related violence is facial trauma. In 2010, a Royal Darwin Hospital surgeon, Dr. Mahiban Thomas, reported that an estimated 350 cases of broken jaws and noses were admitted to the hospital each year, with 88 per cent of those cases caused by alcohol-related assaults.¹⁶⁷ Darwin was suggested to have the highest rate of broken jaws in the world, second only to Greenland.¹⁶⁸ Numerous studies published in national and international journals on oral and maxillofacial surgery take note of this incidence rate. Additionally, stakeholders consulted by the Panel have noted that due to high incident rates, Darwin has become a global research hub for studying the complexities of facial trauma.

Regrettably, the consequences of alcohol consumption also extend to death. The Northern Territory has nearly three times the level of alcohol-induced deaths compared to the next highest State or Territory, at a rate of 8.9 per 100,000 population in Darwin, and 28.5 deaths per 100,000 in the rest of the Territory.¹⁶⁹ This figure was more than five times the Australian population-weighted average.

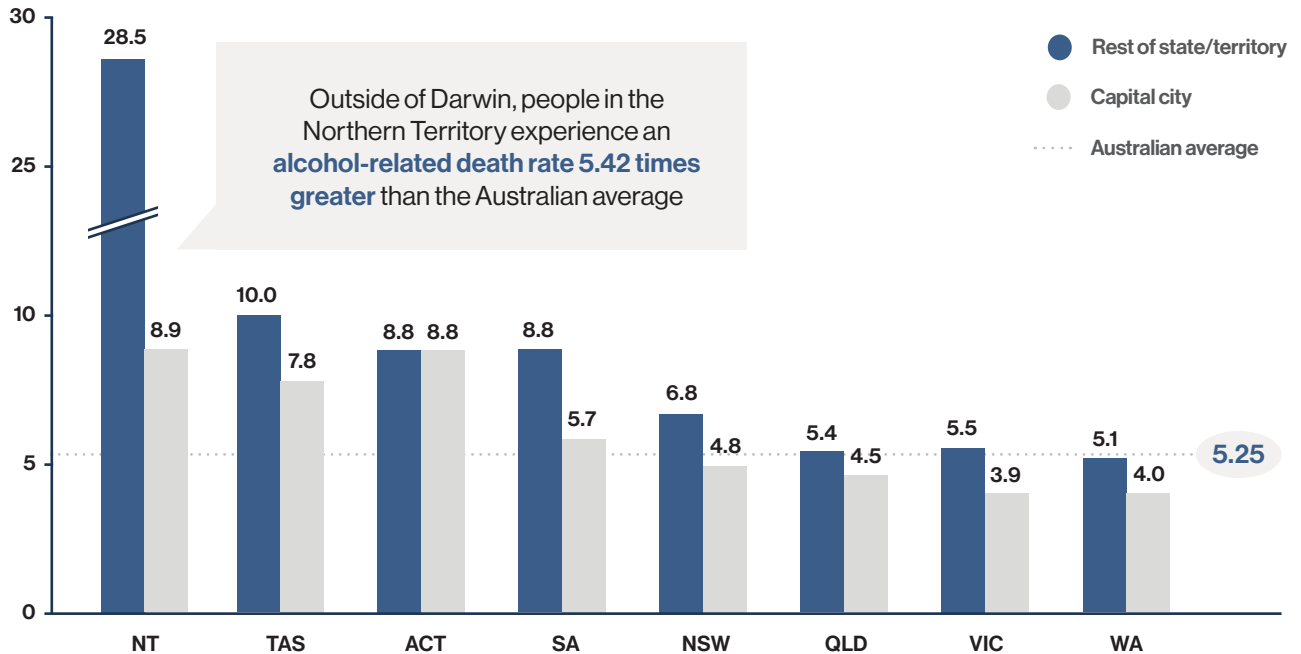
¹⁶⁷ Mahiban E. Thomas and Cameron Scott (2009), 'Recurrent mandibular fractures', *International Journal of Oral and Maxillofacial Surgery*

¹⁶⁸ ABC News, 'Darwin revealed as world's broken jaw capital', 7 January 2010

¹⁶⁹ Australian Institute of Health and Welfare (2019), 'Alcohol and other drug use in regional and remote Australia', Figure 3.8

Exhibit 20:

Rate of alcohol-induced deaths per 100,000 population by state and territory



Source: Australian Institute of Health and Welfare (2017), 'Alcohol and other drug use in regional and remote Australia: consumption, harms and access to treatment', Figure 3.8 - Rate of alcohol-induced deaths by region of usual residence in 2017

Inter-generational impacts of alcohol

High levels of alcohol consumption can transcend generations and prolong the negative social impacts experienced by related communities. Fetal Alcohol Spectrum Disorder (FASD) is one such notable issue. But little current data exists on the state of FASD in specific population groups. This is a result of three things: voluntary reporting of FASD incidences within communities, lack of clinical recognition for the full spectrum of fetal alcohol disorders, and the variation in the diagnostic criteria employed by medical personnel in identifying FASD.¹⁷⁰

Children bear a substantial burden of harm. The *Alcohol Policies and Legislation Review: Final Report* (Riley Review) noted that biological, psychological, family, community or cultural level risk factors can influence a person's chance of misusing alcohol.¹⁷¹ These findings also serve to highlight inter-generational impacts and their likely implications for educational attainment, secure employment and interface with the judicial system. To this end, Superintendent Antony Deutrom APM said that:

“Across a lifetime, alcohol (and attendant problems of domestic violence) creates dysfunction in the family, with the responsibility of caretaking passing to older generations. Now, adult aged children, first involved in police records of alcohol related harm as a child, are now falling into violence, imprisonment. This comes about because of the difficulties of going to school, the experience of trauma. Alcohol is an intrinsic part of the Northern Territory ‘frontier’ culture, and regulation to construct a harmonious society is seen negatively to be rolling back this culture. The Territory needs to sober up, stand back and have a good look at itself.”

- Superintendent Antony Deutrom APM, Northern Territory Police (9 March 2021)

170 Australian Indigenous Health Bulletin (2018), 'Review of the harmful use of alcohol amongst Aboriginal and Torres Strait Islander people'

171 Northern Territory Government (2017), 'Alcohol Policies and Legislation Review (Riley Review)' p.103

The above highlights inter-generational impact and undoubted implications for educational attainment, secure employment and the interface with the criminal justice authorities.

Effects of alcohol consumption in the Aboriginal and Torres Strait Islander population

Alcohol consumption patterns and the corresponding health issues, violence, anti-social behaviour, social impacts and costs are more pronounced within Aboriginal and Torres Strait Islander populations across Australia, and more acutely in the Northern Territory.

The alcohol-related burden of disease for Aboriginal and Torres Strait Islander Australians is 3.1 times that of non-Indigenous Australians with respect to years of life lost.¹⁷² Notable too is the incidence of FASD among Northern Territory Aboriginal and Torres Strait Islander peoples. Of live births, 1.87 per 1,000 among Aboriginal and Torres Strait Islander babies are estimated to involve FASD. This compares to a rate of 0.68 live births per 1,000 in the overall Northern Territory population – almost one-third of the rate for Aboriginal and Torres Strait Islander peoples.¹⁷³ It is noted that

this data was obtained from studies between 1990 and 2010, which had a relatively small sample size.

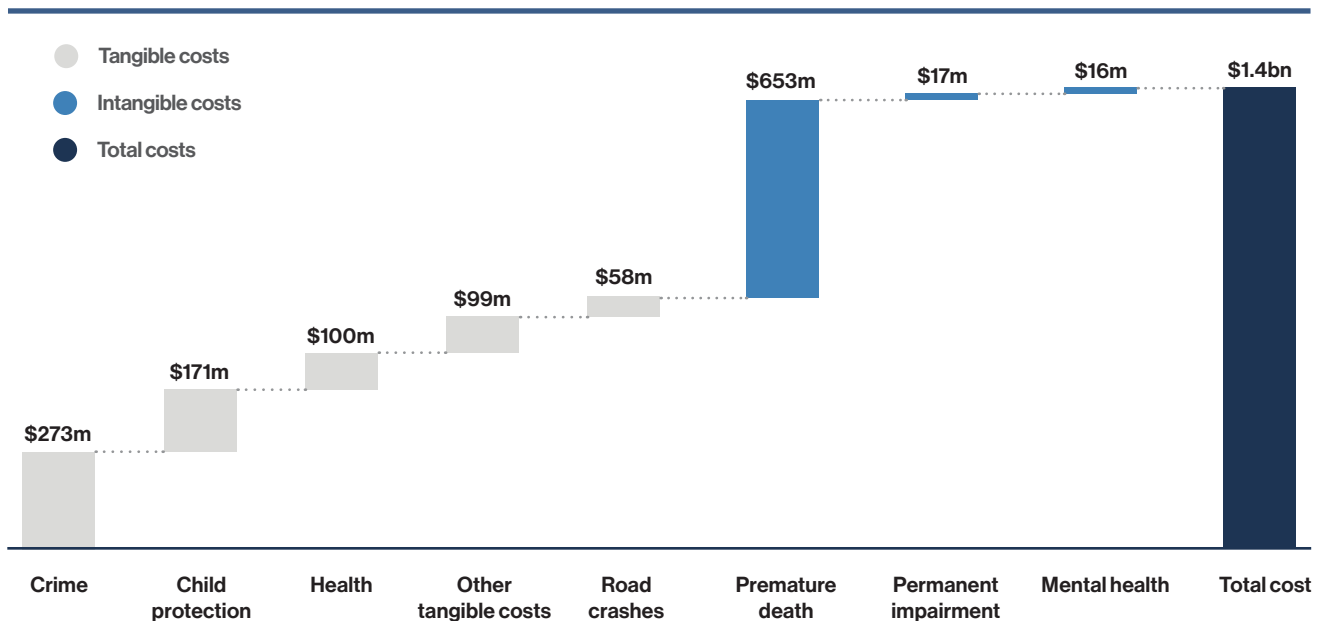
Further, national criminology statistics show that Aboriginal and Torres Strait Islander peoples in the Northern Territory were up to five times more likely to be affected by interpersonal violence. A total of 38 per cent of hospital admissions for injuries were directly linked to alcohol-related violence. Notably, 80 per cent of the 350 facial fracture cases in the Royal Darwin Hospital each year arise in the Aboriginal and Torres Strait Islander communities.¹⁷⁴ This corresponds to 155 jaw fractures per 100,000 population.

Financial costs of alcohol consumption

Given the wide-ranging nature of harm and flow-on effects, dangerous alcohol consumption has a significant financial cost to society (or social cost). Alcohol consumption in the Northern Territory has declined over the last decade. A report by the Menzies Institute of Health and Research in 2019 demonstrates that the costs and harms have not declined. The Northern Territory still maintains the greatest per capita costs of harms in the nation.¹⁷⁵

Exhibit 21:

Breakdown of social costs of alcohol in the Northern Territory as at 2015-16



Source: James Smith, Steve Whetton, Peter d'Abbs (2019), 'The social and economic costs and harms of alcohol consumption in the NT', Menzies School of Health Research

172 Australian Institute of Health and Welfare (2018), 'Profile of Indigenous Australians'

173 Australian Indigenous Health Bulletin (2018), 'Review of the harmful use of alcohol amongst Aboriginal and Torres Strait Islander people'

174 Rama Jayaraj and Mahiban Thomas et. al (2012), 'High risk alcohol-related trauma among the Aboriginal and Torres Strait Islanders in the Northern Territory'

175 Menzies School of Health Research (2019), 'The social and economic costs and harms of alcohol consumption in the Northern Territory'

In 2015–16, the primary indicators of the total social cost of alcohol in the Northern Territory was estimated at \$1.3 billion, and the overall cost for primary and secondary indicators was \$1.4 billion.¹⁷⁶ The largest tangible costs included crime, child protection, health, and road crashes (excluding mortality and hospitalisations), totalling more than \$600 million. Intangible costs also made up a substantial proportion of total cost, led by premature death costs of over \$650 million.¹⁷⁷ Including both tangible and intangible costs, this equates to a total estimated impact of \$7,578 per adult resident of the Northern Territory.

It is important to note this social cost in the context of the Northern Territory's Gross State Product (GSP). This is the final market value of all goods and services produced in a given year. The Northern Territory Government estimated that GSP in the 2015-16 period was \$24.3 billion.¹⁷⁸ The social cost of alcohol reflects expenditure by individuals and the Northern Territory Government on services to manage the repercussions of alcohol abuse. Accordingly, the social cost of alcohol was approximately 5.3 per cent of GSP, and tangible costs alone were approximately 2.5 per cent of GSP. Even more notably, government consumption expenditure – spending by the government to produce and provide services to the public – was estimated at \$7.3 billion.¹⁷⁹ The total social cost of alcohol makes up approximately 17.5 per cent of this expenditure and speaks to the severity of the damage caused by the risky consumption of alcohol.

The Northern Territory Police witnesses this social cost. In Superintendent Antony Deutrom's evidence to a Liquorland application for a substitution of premises in Palmerston in July 2020, Northern Territory Police stated that the impacts of alcohol on the Northern Territory continue to be "appalling and pervasive... culminating in extra strain".¹⁸⁰ At the time, demand for police services across the Northern Territory was on the rise, up 39.5 per cent compared to the previous period. Further, 15.4 per cent of those incidents were alcohol-related. Superintendent Deutrom also said, "an increase in alcohol availability could further impact on these figures in a negative manner".¹⁸¹

In relation to the Darwin Dan Murphy's development, Commander of Police in the Northern Territory, Travis Wurst, gave evidence to the Liquor Commission in 2019. Commander Wurst referred to the risks attached to the proposed Bagot Road site from a public and road safety viewpoint, the problems of public drinking, and more generally about the role of the Police Auxiliary Liquor

Inspectors and the impact of alcohol restricted areas in the Greater Darwin area and surrounding remote communities. Commander Wurst also noted that the Northern Territory Police were neutral on the application by Woolworths Group and that the application was neither objected to formally, nor endorsed in any way.

Alcohol-related harm in the context of the Dan Murphy's development

Northern Territory Police data indicates that alcohol plays a significant role in crime and violence in the suburbs in a 5-kilometre radius of the original proposed Dan Murphy's site on Bagot Road. This has been classified as the neighbourhood area. Here, alcohol is involved in:

- 64 per cent of all assaults;
- 36 per cent of sexual assaults;
- 40 per cent of robberies; and
- 74 per cent of breach of violence order offences.

Further, there is an alarmingly high rate of domestic violence in the neighbourhood area compared to the rest of Greater Darwin:

- alcohol-related domestic violence offences accounted for 71 per cent of all domestic violence offences in the neighbourhood area;
- domestic violence offences were 29 per cent higher; and
- alcohol-related domestic violence offences were 41 per cent higher.¹⁸²

¹⁷⁶ Menzies School of Health Research (2019), 'The social and economic costs and harms of alcohol consumption in the Northern Territory'

¹⁷⁷ Note that the intangible costs do not include the lost quality of life due to addiction among dependent drinkers and family members of dependent drinkers

¹⁷⁸ Northern Territory Government (2021), 'Northern Territory Economic Growth'

¹⁷⁹ Northern Territory Government (2021), 'Northern Territory Economic Growth'

¹⁸⁰ Decision of the Northern Territory Liquor Commission dated 3 July 2020, paragraph [42]

¹⁸¹ Decision of the Northern Territory Liquor Commission dated 3 July 2020, paragraph [42]

¹⁸² Evidence of Dr Sarah Giles, Clinical Director of Danila Dilba Health Service - Decision of the Northern Territory Liquor Commission dated 20 September 2019, paragraph [324]

5.4 Policy and regulatory background

The extensive health, social and financial costs from excessive alcohol consumption have led to numerous attempts by Northern Territory and Commonwealth Governments to control consumption and mitigate alcohol-induced harms across the Northern Territory.¹⁸³ In recent years, six key programs have been introduced: the Living With Alcohol program (1992-2002); the Northern Territory Emergency Response (Northern Territory Intervention) (2007); the Banned Drinker Register (2012-2013, 2017-present); the Point of Sale Interventions (2012-present); the Stronger Future Program (2012-present); and Alcohol Mandatory Treatment (2013-2016).

However, Aboriginal and Torres Strait Islander leaders have noted that this is not enough. June Oscar AO, the Aboriginal and Torres Strait Islander Social Justice Commissioner of the Australian Human Rights Commission said to the Panel:

“We are tired of going cap in hand to the government for programs to deal with the impact of alcohol on the community. We are struggling to respond to current need. We are dealing with a humanitarian crisis. This is our lived realities. The impact of alcohol is for the whole of life. We need to give voice to those who cannot. The complexity of alcohol across the life-course has been neglected for far too long”

- June Oscar AO, Aboriginal and Torres Strait Islander Social Justice Commissioner, Australian Human Rights Commission (23 February 2021)

There has also been a marked attempt by the Northern Territory Government to reduce public intoxication, lawlessness and loitering in public spaces.

Managing anti-social behaviours

One of the most visible forms of disorder in the Darwin region, and one which many stakeholders identify as receiving an outsized portion of funding and attention, is public intoxication, lawlessness and loitering in public spaces. Anti-social behaviour is common in Darwin's public places, and, as one stakeholder notes, is nearly always alcohol-related.

Four organisations are trying to manage anti-social behaviour, with a significant cost to the community. Larrakia Nation runs its night patrol from 4pm to 12am and its day patrol from 9am to 4pm. A total of \$10.5 million in government funding has been awarded to Larrakia Nation for these patrols and other services.¹⁸⁴ The City of Darwin and the Northern Territory Government also fund the Territory Protective Services City Safe Security Patrols, costing over \$800,000 per year.¹⁸⁵ The Darwin Safer City Program also includes an 'Assertive Outreach Team' of three who engage with homeless people in public spaces.¹⁸⁶ Since 2018, Northern Territory Police has employed officers mounted on Segways as part of a 'visible policing' strategy for safer public spaces.¹⁸⁷

In partnership with Larrakia Nation, the Northern Territory Government has introduced a mobile application to enable the callout of the Larrakia Nation night and day patrols to incidents in real-time.¹⁸⁸ Over the course of the calendar year from December 2019 to November 2020, Larrakia Nation received 20,999 call outs for support from the app as well as other channels.¹⁸⁹ Nearly a quarter of these (5,001) saw the Patrol take someone to a Sobering Up Shelter, though many more of these call outs are related to alcohol.

183 It is also worth noting that the Commonwealth raises significant revenues from alcohol excise, the benefits of which flow indirectly to the Northern Territory

184 Commonwealth Government funds Night Patrol, Northern Territory Government funds Day Patrol. Larrakia Nation Aboriginal Corporation (2020), 'Annual Report 2019-2020'

185 Northern Territory Government (2021), 'City Security Patrols Extended'

186 City of Darwin (2021), 'Assertive Outreach'

187 Daily Mail (2018), 'Police trial Segways on the streets of Darwin'; Department of the Chief Minister (2019), 'The Plan to fix Antisocial Behaviour'

188 Department of the Chief Minister (2019), 'The Plan to fix Antisocial Behaviour'

189 Larrakia Nation Aboriginal Corporation, 'Larrakia Nation Aboriginal Corporation Patrol Period Dec 2019 to Nov 2020', provided to the Panel 16 March 2021

The Riley Review

In response to ongoing concerns about alcohol abuse and the mixed success of previous measures, the Northern Territory Government commissioned the Hon. Trevor Riley AO, former Chief Justice of the Supreme Court of the Northern Territory, and an independent Expert Advisory Panel, to review all aspects of the *Liquor Act 1978* (NT) and surrounding policies. As part of the review, the Expert Advisory Panel considered 138 submissions from key stakeholders, including research institutes, government departments, health organisations, industry representatives and the general public.

The review's terms of reference were twofold: alcohol policy, which involved assessing existing policy implementation and effectiveness as well as best practice; and alcohol legislation, which involved advising the government on potential Liquor Act reforms.

In October 2017, the *Alcohol Policies and Legislation Review: Final Report* (Riley Review) was published. It drew on expertise from industry, health, Aboriginal and Torres Strait Islander affairs, and policing to develop a whole-of-government integrated alcohol harm reduction framework that was informed by best practice alcohol harm prevention and management initiatives.¹⁹⁰

“Regrettably, we hold an unenviable list of firsts. We have the highest per capita consumption of alcohol in Australia. It is amongst the highest in the world. We also have the highest rate of risky alcohol consumption in Australia with 44 per cent of people drinking at a level that puts them at risk of injury or other harms at ‘least once in the past month’, compared with 26 per cent of people nationally. We have the highest death rate due to alcohol of any Australian jurisdiction. We have the country’s highest rates of hospitalisations related to alcohol misuse. Forty percent of all road fatalities in the Northern Territory involve an illegal blood alcohol concentration compared with less than 30 per cent in other jurisdictions. Unfortunately, the list goes on.”

- Hon. Trevor Riley AO, Chair of Expert Panel, Alcohol Policies and Legislation Review (October 2017)

To its credit, the Northern Territory Government accepted 187 recommendations and pledged in-principle support for a further 32. It rejected a recommendation to ban takeaway sales of alcohol on Sundays.¹⁹¹ As of August 2019, the Government noted that 164 of the 220 recommendations had been marked as ‘completed’, or ‘completed and ongoing’, with the remaining recommendations marked as ‘ongoing work’, ‘further planning’ or ‘no action required’.¹⁹² Notably, the Government reintroduced the Banned Drinker Register and established a Minimum Unit Price.

It is too early to tell whether the recommended programs, policies and reforms have been effective. However, research is being conducted into the efficacy of these potential solutions.¹⁹³ An evaluation of the Minimum Unit Price (12 months after its introduction in October 2018) found declines across the Northern Territory in alcohol-related assaults, ambulance and emergency department attendances, drink driving incidents, Sobering Up Shelter admissions and child protection notifications.¹⁹⁴ However, indicators such as alcohol-related assaults have since increased, and are now above 2018 levels as shown in Exhibit 19.

In the August 2019 Alcohol Position Update, the Northern Territory Government listed what it viewed as the key recommendations from the Riley Review. The following exhibit sets out the implementation status of these key initiatives.

190 Northern Territory Government (2017), *Alcohol Policies and Legislation Reform – Final Report*

191 Northern Territory Government (2019), *Position on Alcohol Policies and Legislation Review Final Report’s Recommendations*

192 Northern Territory Government (2019), *Position on Alcohol Policies and Legislation Review Final Report’s Recommendations*

193 Cassandra J. C. Wright, Sarah Clifford, Mia Miller, Peter D’Abbs, Caterina Giorgi, Meredythe Crane and James A. Smith (2021), ‘Editorial: While Woolworths reaps the rewards, the Northern Territory community will be left to clean up the mess’, *Health Promotion Journal of Australia*, p. 1–5

194 Kerri Coomber et. al (2020), *Investigating the introduction of the alcohol minimum unit price in the Northern Territory*

Exhibit 22:

Implementation status of key Riley Review recommendations as identified by the Northern Territory Government

Recommended category	Key recommendations	Implementation status
Whole of government approach	Implementing a stronger governance framework	●
	Introducing a dedicated locally based research body	●
	Improving data collection, linkages and sharing	●
Regulatory framework	Rewriting current Liquor Act	●
	Introducing a moratorium on new takeaway liquor licences	●
	Returning to a Liquor Commission regime	●
Harm prevention	Instituting a floor price on alcohol (minimum unit price)	●
	Introducing a volumetric tax	●
	Creating targeted public health education programs	●
Managing harms	Introducing therapeutic courts	●
	Creating a funding timeline for new programs	●
	Trialling managed alcohol programs	●

● Complete and ongoing
 ● Ongoing work

Note: The Northern Territory Government defines 'complete and ongoing' as wholly complete and continuing; 'ongoing work' has been commenced but is not complete
Source: Alcohol Policies and Legislation Review – Final Report (2017); Northern Territory Government Alcohol Position Update (2019)

Harm-minimisation solutions

There may be the possibility of technology-based solutions which could in the future be employed by the alcohol industry. The Panel has not tested these solutions against practice and they are included by way of suggestion only.

Potential technologies to minimise the negative impacts associated with alcohol

Digital packaging innovation

Product labels are printed directly onto a product's primary packaging (i.e. a can or bottle) using digital printing technology. This enables much shorter print runs than traditional printing methods which are expensive to adjust. Educational and other promotional messages regarding the harmful use of alcohol could be printed and delivered to consumers in specific geographic areas and updated more regularly. This also allows more localised harmful behaviours to be addressed over time. For example, in 2017 Coca-Cola partnered with Hewlett Packard to create unique label art for drink bottles that were personalised towards individual consumers. Surveys could be used to identify the issues to be addressed in local areas, allowing on-packaging labels to be appropriately targeted.

Augmented reality

Product labels or logos could be scanned using a smartphone app that then superimposes static or moving images and text onto the on-screen image of the product label or logo. These images could then be used to deliver powerful messages designed to reduce the harmful use of alcohol. Other applications of this technology include the game 'AR Runner', which was designed to encourage outdoor exercise by users who run 'through' checkpoints superimposed onto the images of parks or courtyards.

Source: Accenture (2021)

Note: Any consumer data would only be accessed on an opt-in basis, with appropriate data privacy, security safeguards and governance processes in place

6

Endeavour's New Store Approval Process

Endeavour identified that a Dan Murphy's development in Darwin offered a promising commercial opportunity. Its property team shortlisted and identified a site with the best chance of commercial success, and its finance team believed that in time the development would generate the revenue and profit needed to make it a successful Dan Murphy's. The Endeavour process considered demographics largely to the extent that it identified a market and did not adequately embed a process for assessing the social impact of a development in its internal approvals. Had it done so, it may have become aware of the risks associated with opening a store close to three Aboriginal and Torres Strait Islander dry communities, with unique contexts of alcohol abuse, pedestrian traffic accidents and intergenerational trauma.

6.1 Endeavour's overall approach to store openings

Endeavour has an ambitious approach to store growth, opening an average of 45 stores per year, and 10–12 of these are new Dan Murphy's stores. Each year, between 15 and 30 stores (normally BWS stores) are closed for financial or other commercial reasons. Once Endeavour has passed all relevant internal approvals for a new store, a typical store rollout would require six months for planning, six months for licensing and six months for construction.

Typically, Endeavour follows six sequential steps when approaching a store opening. This chapter looks at how steps one to four applied to the proposed Dan Murphy's Darwin development. Under the current system, Endeavour management undertakes a mix of formal and informal processes to assess the potential of a new store and its viability on a specified site. Then, in stage four (site approval), the Endeavour Property Committee considers the new store proposal before escalating to the Woolworths Group Property Committee, which has delegated authority from the Woolworths Group Board of Directors, and can ultimately approve the proposal. Community impact is typically considered between stages four and five.

Exhibit 23:

New store decision-making steps



Note: External approvals are considered in Chapters 7 to 9; construction/fitout step is not considered in this report. Also note that a proposal can be rejected by Woolworths at any time in Stages 5 and 6.

Source: Endeavour

6.2 Strategy

At the strategy stage, the Endeavour team identifies areas where the Dan Murphy's brand has a gap in the market. Darwin was formally identified as a potential location for a future Dan Murphy's development in around 2013. The reasons for Darwin's appeal fell into four broad categories.

- **Population growth**

During Endeavour's initial strategy assessment, Darwin's population was estimated to be 136,630 in 2013, and was expected to grow at

around 1.5 per cent annually. This was higher than the expected growth rate for Australia over the same period. Greater Darwin was also considered to be a promising tourist destination, attracting 725,000 visitors in 2013–14.¹⁹⁵

- **Affluence**

Darwin's median total income per capita is high at \$62,379 – second only to that of the Australian Capital Territory at \$66,505.¹⁹⁶ There are a high number of white-collar workers, including public servants, professional services workers, legal services workers and defence personnel.

¹⁹⁵ Tourism NT (2014), 'Annual Report 2013–14', p.

¹⁹⁶ ABS (2020), 'Personal Income in Australia: Employee Income by Greater Capital City Statistical Area (2011–12 to 2017–18)'

- **Competitive advantage**

Darwin was and still is the only major city in Australia with a population over 100,000 people that does not have a Dan Murphy's. Two existing big box liquor outlets operate in the region, but are not operated by a national retailer such as Coles. On average, the performance of Woolworths Group's BWS stores in Darwin in FY13 was above the Australian benchmark.

- **Strong packaged liquor sales**

Endeavour also believed the market for packaged liquor sales in Darwin and the Northern Territory generally was well above the national average, driven by both locals and tourists.

On this basis, Woolworths Group formed an initial favourable commercial judgement of a Dan Murphy's development in Darwin. Substantive risks or social considerations are not considered at this stage, so do not appear to have been formally identified. Equally, Endeavour personnel did not sufficiently consider social or governance factors.












6.3 Site identification

At the site identification stage, the property team identifies available sites within a particular area and selects target sites. In August 2015, the Woolworths Group Liquor property team identified 10 large parcels of land as possible sites for a Darwin Dan Murphy's development. Shortlisted sites were assessed against a consistent set of criteria designed to optimise the operation of a Dan Murphy's.

A site must meet size and configuration requirements to be deemed suitable for a Dan Murphy's. The property team typically looks for a 3,500–4,000 square-metre plot of land to support a Dan Murphy's store, including the store, car parking, loading bay and all other areas associated with the store. While a typical Dan Murphy's store averages more than 1,000 square metres of retail space, the property team considered that a larger site was necessary for the proposed Darwin Dan Murphy's development, which would be the only Dan Murphy's in the Northern Territory. Given its remoteness, the store would have to maintain a larger inventory to reduce freight costs and ensure supply chain efficiencies. The site identification team consider access and egress, and whether roads, intersections and pedestrian

Exhibit 24:

Criteria for site identification

	Site size and configuration	Location	Planning and regulation
Criteria for site identification	 Site size	 Exposure	 Zoning
	 Store size	 Position in catchment	 Licensing
	 Access and egress	 Competition	
	 Carparking	 Tenancy arrangements	
	 Freight access		

Source: Endeavour management, 15 March 2021

crossings around the proposed premises need to be altered or built. There is also consideration of space to allow appropriate and safe freight access.

There are four criteria specific to location when considering store placement at this stage. To ensure that customers know where the store is, the site identification team considers exposure and visibility of the site from main roads. Major arterial roads with high vehicle traffic heighten exposure and attract passing drivers to the store. The property team assesses a site's position within the trading area, preferencing a central location that is close to major population centres. Endeavour also assesses proximity to other packaged liquor outlets, both stores under Endeavour brands (for example, BWS) and external competitors. Due to Endeavour's strong market share, it is difficult for a new Dan Murphy's store to not cannibalise the company's own trade. The property team also considers rental costs. There may also be features of the tenancy (for example, arrangements with neighbouring stores, partnerships with the landlord or incentives) which are reflected in site identification decisions.

Potential sites must have favourable planning and regulatory rules. Because rezoning a location is time-consuming and imposes uncertainty on the development, the Endeavour site identification process considers whether existing zoning allows retail use, including liquor retail. The property team also develops an initial sense for what is required in the licence application process should the site proceed to the approvals stage.

At this stage of the process, the sole focus of the property team is to identify possible store sites and their relative merits in terms of commercial viability. The Endeavour property team would not typically consider social or community impacts at this point, nor would they involve Woolworths Group's sustainability team in the preliminary processes behind store openings.

6.4 Site nomination

At the site nomination stage, the property team selects a site based on the characteristics outlined above and begins the process of securing that site. After considering the ten shortlisted sites, Endeavour decided to pursue the Bagot Road site around May 2016. It also considered other sites on airport land. Initially, the property team nominated a site on McMillans Road, though senior executives said they preferred a plot on Bagot Road, partly due to the success of the neighbouring Bunnings. The Woolworths Group's Property Committee formally approved the site in October 2016.

Site considerations

The Bagot Road site was chosen for several key reasons. There was sufficient space on the site to accommodate a large store, as well as ample carparking and freight access (the planned store was 2,000 square metres, with 1,300 square metres of trading floor space and the remaining 700 square metres for warehousing, loading docks and other store facilities). A condition of the lease agreed with the landlord, the Airport Development Group, was the construction of a right-hand turn from Bagot Road (northbound) into Osgood Drive. Further, Bagot Road is a major arterial road linking Darwin's northern suburbs with the CBD. McMillans Road, on the northern border of Darwin International Airport carried approximately 27,500 cars each day, and Bagot Road, adjacent to the west of the site, saw 35,800 cars each day.

The site was also close to populous residential areas, with 46,821 residents within 5 kilometres of the proposed store. This population was growing roughly in line with the city average, at 1.24 per cent per annum (from 2006-2011). It had a higher median income (\$1,011 per week) than the Northern Territory (\$871), though slightly less than the Greater Darwin average of \$1,069. It also had a higher concentration of older, post-children households than Greater Darwin, with 15.4 per cent of the population over 60 as compared to 12.1 per cent in Darwin. The rate of home ownership with no outstanding mortgage was also nearly 4 percentage points higher than in Greater Darwin, at 20.4 per cent of households as opposed to 16.7 per cent in Greater Darwin.

Competition was also a key concern. While there were 27 liquor licensees within a 5-kilometre radius of the store, a Dan Murphy's on Bagot Road would be the closest liquor store to suburbs such as Ludmilla, with the only competitor store within 800 metres being possibly the NT Oriental Emporium. This reasoning has been criticised by health and social policy experts.

The store was intended to be the 'anchor tenant' for the Darwin Airport Central development, which promised future investment in surrounding facilities, amenities and other stores as well as significant walkthrough foot traffic. Darwin International Airport is held through a 99-year leasehold arrangement with the federal government, so building on this land means that the usual processes of zoning and planning approval are significantly expedited.

Licensing considerations

The property team did not initially foresee any major challenges to the application to substitute the BWS Stuart Park liquor licence. Endeavour considered the community impact and public interest tests required under the law. Endeavour identified at-risk groups in the catchment area, based on four factors: the remoteness of the trade area; the size of the Aboriginal

and Torres Strait Islander population; the size of the youth population; and the prevalence of socio-economic disadvantage. While Endeavour did consider these at-risk groups, the Panel's view is that Endeavour's consideration of these issues was inadequate.

6.5 Site approval

At the site approval stage, the Woolworths Group property team and Endeavour's finance and retail operations teams assess the commercial viability of the development and submit a business case for approval. The business case was determined primarily by two factors: the market for a premium liquor merchant; and the potential market growth as a result of the store.

Market for a premium liquor merchant

Based on an initial assessment of the Darwin market, Endeavour noted an apparent gap in the market that a Dan Murphy's could fill. Alongside the strategic considerations of affluence and limited competition from big box retailers, Endeavour noted substantial support for the proposed development from the community. Endeavour commissioned surveys over the phone and online with positive responses. Lastly, Endeavour noted a shift toward large-format liquor stores throughout the liquor industry, where consumer preferences indicate a greater demand for a wider range of products, price competitiveness, services, facilities and management.

Property Committee approval

The Woolworths Property Committee, if satisfied with the business case, authorises Endeavour to enter into an agreement for lease, conditional upon licensing approval. In this case, the Woolworths Group Property Committee approved the Bagot Road site and decided to initiate a liquor licence application.

6.6 Summary

It is clear that at all stages of the site selection process, commercial considerations took precedence over any deeper considerations of public interest and the perceptions about, and the actual possibility of, harm arising from the store. The focus on commercial viability in relation to the proposal also obscured the potential for reputational harm and brand risk throughout the store approval process.

While at-risk groups were considered at the site nomination stage, assessing these groups in isolation rather than in tandem reinforced the perception that any harms as might be feared by the community would be limited. For example, there are many low-income, mostly young *and* largely Aboriginal and Torres Strait Islander communities surrounding the store, including the Bagot and Kulaluk communities.¹⁹⁷ Using the Northern Territory as the point of comparison in the analysis, rather than Darwin, specifically also reduced the perception of harm. For example, while incomes are higher in Darwin than in the Northern Territory overall, the catchment area includes some of Darwin's lowest socio-economic suburbs, such as Ludmilla and The Narrows. This also obscured factors worthy of consideration, such as the concentrated levels of risk for domestic violence, trauma and road accidents faced by Aboriginal and Torres Strait Islander peoples.

Finally, the social context around the proposed development site was not properly considered at this stage. A better awareness of this context may have helped Woolworths Group identify and address community concerns earlier. For example, it was not until a later stage, during the application process, that the issue of road safety was considered. It is well known among Darwin's Aboriginal and Torres Strait Islander communities that several residents of the area surrounding Bagot Road have died in alcohol-related pedestrian accidents. Additionally, the proposed Bagot Road location is embroiled in the legacy of intergenerational trauma that has had an impact on a significant number of Aboriginal and Torres Strait Islander peoples and their descendants – the selected site is directly opposite a former Aborigines Inland Mission facility, the Retta Dixon Home, which the Royal Commission into Institutional Responses to Child Sexual Abuse found had “not met its obligations to children in its care, including protection from sexual abuse”.¹⁹⁸

¹⁹⁷ Minmarama Park community is not included in this list as the median age among the resident population is 41, as opposed to 25 and 29 among the Bagot and Kulaluk populations respectively.

¹⁹⁸ Royal Commission into Institutional Responses to Child Sexual Abuse (2015), 'Findings released into the Retta Dixon Home in Darwin', Australian Government

“The social impact assessment was conducted by an organisation outside the NT. That organisation wouldn't have been aware of issues specific to Darwin, such as road traffic safety issues.”

- Dr Simone Raye, Vice President, Australian Indigenous Doctors Association (9 March 2021)

Ignorance of these factors helped create the perception of insensitivity to the history and current reality of the Aboriginal and Torres Strait Islander peoples living in the area, especially in relation to alcohol. Many in the community expect businesses selling alcohol to be aware of the costs to society beyond the storefront, a cost which continues to disproportionately affect Aboriginal and Torres Strait Islander communities.¹⁹⁹

¹⁹⁹ Cassandra J. C. Wright, Sarah Clifford, Mia Miller, Peter D'Abbs, Caterina Giorgi, Meredythe Crane & James A. Smith (2021) 'Editorial: While Woolworths reaps the rewards, the Northern Territory community will be left to clean up the mess', *Health Promotion Journal of Australia*, p. 1–5

7

Regulatory Framework, Application to the Liquor Commission and Applications to the Northern Territory Civil and Administrative Tribunal

This chapter discusses the complex and incremental changes made to the liquor licensing regulatory framework in the Northern Territory between 2017 and 2019, which implemented the recommendations of the Riley Review. Relevantly, these changes culminated in the Liquor Commission rejecting Woolworths Group's application to substitute its liquor licence for its BWS store at Stuart Park for one at new premises at Bagot Road, Eaton. Woolworths Group relied on evidence which suggested that increases in liquor licences had not increased harm in other locations and refuted the link between a Dan Murphy's and an increase in harm. It argued that the Liquor Commission should reject the substantial body of evidence presented by health and medical experts during the Liquor Commission proceedings in respect of the likely impact of the development on alcohol related harm and pursued multiple appeals of the Liquor Commission's decision. During the application process, Woolworths Group focused on its track record as an above-compliant operator, the consumer benefits it would offer and the harm minimisation measures that would be implemented at the point of sale and in the immediate surrounds. In the Panel's view, in relation to the Darwin Dan Murphy's development, the focus on harm minimisation at the point of sale meant that Woolworths Group did not sufficiently engage with broader concerns about alcohol-related harm that were presented during the legal process. The focus on achieving a favourable legal outcome also overshadowed the possibility of deeper considerations of public interest and harm.

7.1 Introduction

It is clear that successive Northern Territory governments have struggled over a long period to deal with the impacts on the community of excessive alcohol consumption, particularly on Aboriginal and Torres Strait Islander peoples. The government has commissioned various reviews and reports, which have resulted in the implementation of a number of incremental legislative changes, policies and programs specifically formulated to address these issues. This background information is necessary to contextualise the legislative environment surrounding Woolworths Group's application to substitute its BWS Stuart Park licence for the premises at Bagot Road, Eaton.

As variously discussed throughout this Report, the Panel has examined whether Woolworths Group sufficiently considered the complexity of issues associated with the proposed Dan Murphy's development. Of particular interest were the findings and recommendations of the Riley Review, including a moratorium on the establishment of new takeaway liquor outlets for five years, from 2018 to 2023. The moratorium was introduced into legislation in February 2018. The public policy considerations that informed its introduction were important.

The procedural chronology relating to Woolworths Group's liquor licence substitution application is protracted and complex. It involves various legal bodies and statutory officers, who at each stage of the process, due to their varying roles and amendments made to legislation, were tasked with answering different legal questions and provided with different criteria to form their respective assessments. From the outset, Woolworths Group and Endeavour were focused on achieving the approval of the substitution application in order to proceed with the Dan Murphy's development. That is not to say that they were unconcerned about the broader community engagement they undertook. The overarching goal of achieving regulatory approval did, notwithstanding, lead to an emphasis on meeting the legal criteria required at each step of the application process. This focus can, with hindsight, be seen as shaping the approach taken by Woolworths Group's Board and executives to the application process, which resulted in a failure to make broader assessments about the longstanding harm caused by alcohol in the community, and to properly engage with and hear the views of key stakeholders.

From the outset, Woolworths Group saw itself as a good and responsible provider of alcohol operating over and above mere regulatory requirements. As part of its application, Woolworths Group agreed to implement measures that went beyond regulatory requirements, such as limiting the product range; implementing a higher Minimum Unit Price; introducing roaming security patrols and police auxiliary liquor inspectors; undertaking crime prevention through environmental design (CPTED) principles; and road safety changes. Woolworths Group's self-image, on one view of it understandably informed its approach to obtaining approval for the substitution, and this was achieved on 17 December 2020. However, that self-image blocked out other considerations.

Throughout the application process, Woolworths Group's focus was on its track record as an above-compliant operator, emphasising the unique customer experience it would offer and the measures it would employ to reduce alcohol-related risk, largely at the point of sale. It relied on evidence which suggested that in practical terms, increases in liquor licences had not increased harm and that specific studies of large format stores demonstrated no evidence of increases in harm, including that of its own expert Professor Roberta Ryan. It argued the Liquor Commission should not accept the evidence presented by the objectors' key experts in relation to the likely impact of the store on alcohol-related harm. This perspective framed its approach to the Liquor Commission proceedings. As a result, the Panel found that Woolworths Group did not approach the proceedings with the view of adequately considering and engaging with the substantial amount of medical evidence about the likely impact of the development and alcohol-related harm that was presented by pre-eminent health organisations, social service groups and other experts. The Panel acknowledges that this may reflect the usual legal approach taken by corporations in respect of such applications, and that Woolworths Group was entitled to present its own evidence in support of its application. However, the Panel also found that Woolworths Group's approach and actions fostered a divide between itself and representatives from health organisations, social service groups and other experts. A theme that arose consistently during interviews conducted by the Panel was that these groups and experts felt they weren't being listened to, and that their genuine concerns and objections (formed from working for many years on the ground in the Northern Territory) were discarded and disrespected.

The above discussion is a reminder to all corporations that when they engage in contested legal processes for a favourable economic outcome, decisions about the conduct of such legal processes should not be limited to the legal process itself but should also be examined through the lens of its broader social purpose and reputation.

7.2 The Riley Review

Background

In order to contextualise Woolworths Group's substitution application, it is necessary to provide background on the recent history of liquor licensing regulations in the Northern Territory.

In April 2017, the Northern Territory Government commissioned the Hon. Trevor Riley AO, former Chief Justice of the Supreme Court of the Northern Territory, and an independent Expert Advisory Panel to conduct a review and provide recommendations on broad policy and legislative matters.²⁰⁰ The findings of the review were published on 19 October 2019 in the *Final Report of the Alcohol Policies and Legislation Review* (the Riley Review). The Riley Review identified that the Northern Territory has:

- the highest per capita consumption of alcohol in Australia;
- the highest rates of risky alcohol consumption in Australia; and
- the highest rates of hospitalisations related to alcohol misuse in Australia.²⁰¹

The report also highlighted the relationship between alcohol consumption and traffic fatalities, finding that 40 per cent of road fatalities in the Northern Territory involve an illegal blood alcohol concentration.²⁰²

“There can be no doubt the people of the Northern Territory of Australia have a problem with alcohol. Whilst it can be readily accepted that many people in the Northern Territory do not drink alcohol at all and most of those who do drink alcohol do so responsibly, the fact remains that we have a strong, entrenched and harmful drinking culture. We have a problem that must be addressed... Reform in this area must be a priority for government. The response will need to be a whole-of-government commitment over time and spread beyond the political cycle.”

- Hon. Trevor Riley AO, Chair of Expert Panel, Alcohol Policies and Legislation Review (October 2017)

Recommendations

The findings of the Riley Review were comprehensive, with the Expert Advisory Panel proposing 220 recommendations covering everything from the regulation of liquor licences to harm prevention measures at the point of sale. The review made a number of recommendations, as follows (it is important to note that the first four of the following recommendations were at best ignored or at worst implicitly rejected with the passing of the *Liquor Further Amendment Act 2020* which commenced on 20 November 2020):

- Importantly, a Liquor Commission be established to act as primary, independent decision maker under the Liquor Act. The Liquor Commission should comprise four appointed members, with three members, including a chairperson and two other members – one with a health background, required to attend any hearings. The purpose of this recommendation was to foster the appropriate enforcement of, and compliance with, the provisions of the Liquor Act and to ensure there was an appropriate separation between those responsible for making decisions and those responsible for undertaking enforcement and compliance activities.²⁰³
- The role of Director of Licensing be re-established as part of a government agency that would be responsible for monitoring, investigating and initiating enforcement of liquor licensees' compliance with the Liquor Act. The Riley Review recommended that the Liquor Commission delegate certain decision-making functions to the Director, and for such decisions to be reviewable by the Liquor Commission. The Liquor Commission's decisions would in turn be reviewable by the Northern Territory Civil and Administrative Tribunal (NTCAT).²⁰⁴
- A 'public interest and community impact test' be introduced to guide future decisions made under the Liquor Act, including a consideration of the density of liquor outlets and the volume of alcohol sold.²⁰⁵
- The Liquor Act be amended to require applications for the substitution of premises to be treated as a new application, so that such applications were subject to the same requirements, including consideration of the public interest and community impact test.²⁰⁶ This would prevent licences being 're-purposed' for uses that were not originally intended and to ensure that substitution would not be used to circumvent a moratorium.²⁰⁷

200 Northern Territory Government (2017), 'Alcohol Policies and Legislation Review – Final Report', Appendix B

201 Northern Territory Government (2017), 'Alcohol Policies and Legislation Review – Final Report', p. 1

202 Northern Territory Government (2017), 'Alcohol Policies and Legislation Review – Final Report', p. 1

203 Northern Territory Government (2017), 'Alcohol Policies and Legislation Review – Final Report', p. 9, recommendations 2.2.1, 2.2.2, and 2.2.4

204 Northern Territory Government (2017), 'Alcohol Policies and Legislation Review – Final Report', p. 39, recommendation 2.2.6

205 Northern Territory Government (2017), 'Alcohol Policies and Legislation Review – Final Report', recommendations 2.1.4, 2.1.6 and 2.6.1–2.6.2

206 Northern Territory Government (2017), 'Alcohol Policies and Legislation Review – Final Report', recommendations 2.5.24–25

207 Northern Territory Government (2017), 'Alcohol Policies and Legislation Review – Final Report', p. 56

- The categories and terms of liquor licences be amended. This included a condition that takeaway liquor would only be permitted to be sold from standalone businesses in which the primary focus was the sale of alcohol.²⁰⁸ An immediate five-year moratorium would be imposed on new takeaway licences to allow the new framework to be established and take effect, as the Riley Review found that such licences had reached saturation point. The Riley Review also suggested that if results were assessed as being favourable after the first five years of operation, consideration be given to extending the moratorium.²⁰⁹
- Harm prevention measures be introduced, including a minimum unit price (or ‘floor price’) for all alcohol products, at approximately \$1.50 per standard drink, or such other figure determined after appropriate review. This proposal recognised the fact that raising the price of alcohol was a cost-effective way of reducing alcohol-related harm.²¹⁰ The Expert Advisory Panel also recommended that point of sale interventions continue in regional centres, and the Liquor Act be amended to empower uniformed licensing inspectors to oversee the point of sale interventions.²¹¹

7.3 Legislative amendments to the Liquor Act 1978

In the period following the Riley Review, the Northern Territory Government made a series of incremental changes to the *Liquor Act 1978* (NT) (*Liquor Act 1978*) through the following amending Acts.

Commencement date	Legislation	Key amendments
1 September 2017	<i>Alcohol Harm Reduction Act 2017</i> (NT) ²¹²	<p>The Act reintroduced the Banned Drinker Register,²¹³ which banned persons from buying takeaway alcohol if they:</p> <ul style="list-style-type: none"> • had any combination of three protective custodies or alcohol infringement notices in two years; • had two low-range drink driving offences or a single mid-range or high-range drink driving offence; • were the defendant in respect of an alcohol-related domestic violence order; • were subject to an alcohol prohibition condition imposed by a court order (including child protection orders), bail or parole order; • were placed on the Banned Drinker Register by a decision of the Banned Drinker Registrar after being referred by an authorised person such as a doctor, nurse or child protection worker, or a family member or carer; or • were self-referred for any reason.
28 February 2018	<i>Liquor Amendment Act 2017</i> (NT)	This Act repealed the licence conditions restricting the area in which the public could browse for and purchase liquor in stores to a maximum of 400 square metres. ²¹⁴

Continues over page >

208 Northern Territory Government (2017), *Alcohol Policies and Legislation Review – Final Report*, recommendation 2.5.13

209 Northern Territory Government (2017), *Alcohol Policies and Legislation Review – Final Report*, recommendation 2.5.20

210 Northern Territory Government (2017), *Alcohol Policies and Legislation Review – Final Report*, recommendation 3.2.1

211 Northern Territory Government (2017), *Alcohol Policies and Legislation Review – Final Report*, recommendations 3.6.1–2

212 This legislation was introduced before the Riley Review was published, as part of the Northern Territory Government’s broader alcohol reform policy.

213 The Banned Drinker Register was introduced in 2011 to target people who engage in anti-social behaviour and alcohol-related crime, and to provide pathways to treatment. The program was disbanded in August 2012. Territory Labor committed to reintroduce the Banned Drinker Register in the 2016 election.

214 This restriction was introduced by the Northern Territory Government in the *Liquor Amendment Regulations 2016* (NT), which commenced on 20 December 2016. Amid a challenge of this restriction in the Federal Court by Woolworths Group, the regulation was enshrined in legislation in June 2017 in the *Liquor Legislation Amendment Act 2017* (NT). While the Riley Review did not recommend that this restriction be abolished, it recognised that the correlation between the size of a takeaway liquor outlet and alcohol harms was unclear (at p. 59).

7. REGULATORY FRAMEWORK, APPLICATION TO THE LIQUOR COMMISSION AND APPLICATIONS TO THE NORTHERN TERRITORY CIVIL AND ADMINISTRATIVE TRIBUNAL

Commencement date	Legislation	Key amendments
28 February 2018	<i>Liquor Commission Act 2018</i> (NT)	The Act introduced the Liquor Commission as the independent and primary decision maker concerning licensees, serious disciplinary matters, complaints and restricted areas. It also required the Liquor Commission to hold public hearings for all decisions made under the Liquor Act. ²¹⁵
28 February 2018	<i>Liquor Legislation Amendment (Licensing) Act 2018</i> (NT)	The Act provided decision-making authority to the Liquor Commission. ²¹⁶ It also made amendments to create the public interest and community impact test, which required an assessment of the density of liquor outlets. ²¹⁷ It introduced the community impact assessment guidelines ²¹⁸ and a moratorium on new takeaway liquor licences for a period of five years, to 28 February 2023. ²¹⁹
6 June 2018	<i>Liquor Amendment (Point of Sale Intervention) Act 2018</i> (NT)	The Act empowered police officers and licensed inspectors to make point of sale interventions by asking a person buying alcohol to provide their name, address and identification to determine: ²²⁰ <ul style="list-style-type: none"> • whether the person was prohibited from consuming alcohol; • where the alcohol was intended to be consumed; and • whether the alcohol was being purchased for themselves or another person. The Act also empowered the Commissioner of Police to suspend a licence for up to 48 hours. ²²¹
1 October 2018	<i>Liquor Amendment (Minimum Pricing) Act 2018</i> (NT)	The Act introduced a Minimum Unit Price on alcohol to ensure that liquor products are sold for a price no less than \$1.30 per standard drink. ²²²
18 April 2019	<i>Liquor Amendment Act 2019</i> (NT)	The Act expanded the power of police to conduct a point of sale intervention where a customer appeared to have purchased liquor for consumption away from the premises or had liquor in their possession in the vicinity of a licensed premises. ²²³

215 Sections 5 and 16 of the *Liquor Commission Act 2018* (NT)

216 Part V of the *Liquor Act 1978* (NT), as amended by the *Liquor Legislation Amendment (Licensing) Act 2018* (NT)

217 Section 6 of the *Liquor Act 1978* (NT), as amended by the *Liquor Legislation Amendment (Licensing) Act 2018* (NT). This Act does not define density; however, the Riley Review considered that a calculation of density extends to the volume of alcohol sales of particular categories of licences (at p. 59)

218 Section 6A of the *Liquor Act 1978* (NT), as amended by the *Liquor Legislation Amendment (Licensing) Act 2018* (NT)

219 Section 24(2) of the *Liquor Act 1978* (NT), as amended by the *Liquor Legislation Amendment (Licensing) Act 2018* (NT). The Director-General of Licencing issued guidelines in October 2016 that imposed a moratorium on new takeaway liquor licences other than in exceptional circumstances. The Northern Territory Government introduced regulations in October 2017 requiring the Director-General, when considering an application for a new takeaway licence, to consider the Government's policy that no new takeaway liquor licences be issued for two years from the commencement of the regulation, being 27 October 2017

220 Part VIII C of the *Liquor Act 1978* (NT), as amended by the *Liquor Amendment (Point of Sale Intervention) Act 2018* (NT). The Northern Territory's Country Liberal government introduced "temporary beat locations" for police stationed outside takeaway bottle shops in 2012, which raised criticism by the Territory's Labor opposition regarding the use of police resources. In March 2018, before the introduction of this legislation, the Territory's Labor government announced its Comprehensive Plan to Stop Alcohol-Fuelled Violence, including the creation of a new unit within Northern Territory Police, including 75 Police Auxiliary Liquor Inspectors located in Alice Springs, Tennant Creek and Katherine. The *Liquor Amendment (Point of Sale Intervention) Act 2018* (NT) was introduced to empower the Police Auxiliary Licence Inspectors to conduct point of sale duties, including the ability to intervene and stop sales at takeaway liquor outlets. [Sources: Sarah Everingham, ABC News, '[NT Government says police manning bottlos has brought down crime stats](#)'; Northern Territory Government Newsroom (2018), '[Comprehensive Plan to Stop Alcohol-Fuelled Violence](#)']

221 Section 48B of the *Liquor Act 1978* (NT), as amended by the *Liquor Amendment (Point of Sale Intervention) Act 2018* (NT)

222 Part IX A of the *Liquor Act 1978* (NT), as amended by the *Liquor Amendment (Minimum Pricing) Act 2018* (NT). The Riley Review recommended a floor price of approximately \$1.50 per standard drink or such other figure as may be determined after appropriate review (Recommendation 3.2.1)

223 Section 101ZK of the *Liquor Act 1978* (NT), as amended by the *Liquor Amendment Act 2018* (NT)

7.4 Legislative framework for the Liquor Commission's decision

Woolworths Group's substitution application was decided and rejected by the Liquor Commission under the terms of the *Liquor Act 1978*, as amended by the legislation set out above implementing the Riley Review recommendations.

The Liquor Commission was required to have regard to, and exercise its power consistently with, the objects of the Liquor Act in determining the substitution application.²²⁴ As part of its decision-making power, the Liquor Commission was required to apply the public interest and community impact test, which involved considering:²²⁵

- the potential harm or health impacts that may be caused to people, or any group of people within the local community area, and restrictions on the licensee's activities to address harm; and
- the potential impact on the community, having regard to the density of existing liquor licences and the volume of alcohol sales within the community area.

7.5 Changes to Woolworths Group's existing BWS licences

Following engagement with the Northern Territory Government, Woolworths Group applied to vary its existing BWS 'store-type' licences to standalone licences. The purpose of this application was to ensure that Endeavour would be able to operate these licences following its demerger from Woolworths Group. On 13 December 2019, the Liquor Commission granted Woolworths Group's application but imposed special conditions to ensure the separation of BWS stores from adjacent Woolworths supermarkets.²²⁶

7.6 Overview of legal processes

On 19 July 2018,²²⁷ Woolworths Group made two applications to the Director-General of Licensing in relation to a liquor licence it held at a BWS store in Stuart Park.²²⁸ The applications sought to:

- substitute its existing licence at Stuart Park to new premises, which were to be located on the south-east corner of the intersection of Bagot Road and Osgood Drive, Eaton; and
- vary the conditions of the licence.

Woolworths Group was the named applicant for the two applications, as it held the licence for the BWS store in Stuart Park, although Endeavour played an active role in the Liquor Commission proceedings, including the related consultation processes and subsequent appeals.

Woolworths Group's applications commenced a legal process, which was protracted and complex, involving a number of legal bodies, decision makers and appeals. Following the Liquor Commission's refusal of the substitution application, Woolworths Group sought a review by NTCAT, an appeal to the Supreme Court, then a second review by NTCAT. Eventually, its application was approved by the Director of Liquor Licensing on 17 December 2020.

Throughout this process, Woolworths Group emphasised its track record as a good and, better-than-compliant, operator. It pointed to the economic benefits that would flow from the store, and the harm minimisation measures that would be implemented at the point of sale and in the immediate parking, entry and exit surrounds. At each stage of the process, as would be typical of a corporation pursuing such an application, Woolworths Group refuted or minimised the substantial body of evidence presented by health and medical experts, that the Darwin Dan Murphy's would increase alcohol consumption and related harm. Its focus on harm minimisation strategies at the point of sale meant that in the minds of objectors, broader concerns raised by them were minimised or rejected.

²²⁴ Sections 3(3) and 46A(6) of the *Liquor Act 1978* (NT)

²²⁵ Section 6(1) of the *Liquor Act 1978* (NT)

²²⁶ Decision of the Northern Territory Liquor Commission dated 23 December 2019, paragraph [1.1]

²²⁷ Note: Woolworths Group filed an earlier application in 2016 to substitute the BWS Stuart Park licence for the Darwin Dan Murphy's development

²²⁸ Woolworths Group was the applicant in these proceedings as the licence of the BWS Stuart Park was held by Woolworths Group rather than Endeavour

7.7 Application to the Liquor Commission and Woolworths Group's evidence

In June 2019, the hearing was held before the Liquor Commission. It involved extensive evidence and submissions, including from economists, town planners, health experts and members of the local community.

Woolworths Group was required to satisfy the Liquor Commission that approving the substitution application met the public interest and community impact test.²²⁹ In support of its application, Woolworths Group presented a substantial body of evidence, focusing on its reputation as a compliant operator, the consumer experience it could offer to responsible consumers of alcohol and the economic benefits the proposed development would bring to the Northern Territory's economy. In doing so, Woolworths Group identified the issues it needed to address to obtain the licence for Dan Murphy's. The Panel makes no criticism of that process in and of itself from a legal perspective. However, as with many legal processes, there was a failure to consider all issues raised from a sustainability and social value perspective.

Economic benefits and consumer choice

Woolworths Group referred to the benefits that responsible consumers would enjoy, including the greater range and lower prices of Dan Murphy's and the increased competition it would generate. It pointed to the economic benefits and employment opportunities the store would generate. A representative of Northern Territory Airports provided evidence that the proposed site was the last prime site available for development on Bagot Road within the airport precinct. That representative suggested the Darwin Dan Murphy's would provide an ideal anchor tenant for the proposed site as it was a well-recognised and reputable business and brand that would stimulate further development in the precinct and provide a unique retail offering.

Management and minimisation of harm

Woolworths Group's focus from the outset was on the management and minimisation of alcohol-related harm at the point of sale and in the immediate surrounds. This was reflected in the approach it adopted to the consultation process, which was directed at engaging with the local community to create strategies that would minimise alcohol-related harm. It was also reflected in the arguments presented to the Liquor Commission, which involved Woolworths Group (i) refuting claims that the store would increase alcohol-related harm and alcohol consumption, and (ii) suggesting that

to the extent such harm was relevant, Woolworths Group, as a responsible large-scale operator, was best placed to manage such harms. In respect of this issue, Woolworths Group argued as follows:

- **Woolworths Group's reputation as a compliant operator** – Woolworths Group pointed to its record as a large-scale and 'good' operator, arguing that it would set a new standard in Darwin for the responsible sale of alcohol and take extensive action of its own volition to minimise the risk of harm.²³⁰ Evidence was provided by the Managing Director of Dan Murphy's, who pointed to the company's sound track record of managing its stores and taking pride in being a market leader. He explained that in this leadership role, Dan Murphy's maintained a high level of social responsibility – a responsibility it took seriously. Evidence was also provided in relation to the layout and configuration of Dan Murphy's stores, including management practices that ensured each store's trading area was monitored and controlled. As part of its application, Woolworths Group suggested it would offer a better consumer experience and engage in higher compliance standards, ultimately taking market share from less compliant operators.
- **Mitigation measures** – Woolworths Group outlined the mitigation strategies that would be adopted by the Darwin Dan Murphy's development. Evidence was provided that in July 2018, Endeavour commissioned a review of responsible service of alcohol (RSA) policies in the Northern Territory to properly mitigate the risk of alcohol-related harms. For this review, a representative from Endeavour visited a number of packaged liquor outlets and the proposed store location, including meeting with Sergeant Dale Motter-Barnard of the Northern Territory Police. The purpose of the review was to consider and recommend targeted initiatives and harm minimisation strategies to be implemented at the proposed Dan Murphy's development (with reference to the policies and procedures in place at existing Dan Murphy's stores throughout Australia, consideration of the relevant Northern Territory legislation, and consultation with members of the Darwin community).
- **Data regarding the impact of big box liquor outlets** – Woolworths Group presented findings from an internal review suggesting there was little evidence to support the assertion that an increase in the number of retail liquor licences in an area had a direct and negative impact on domestic violence and alcohol-related assaults. It referred to data relating to eight local government areas in NSW, which had experienced an increase in retail liquor licences (including big box-style outlets) but did not show corresponding increases in alcohol-related harm.

²²⁹ Section 6B of the *Liquor Act 1978* (NT)

²³⁰ Decision of the Northern Territory Liquor Commission dated 20 September 2019, paragraph [207]

- **Evidence from Professor Roberta Ryan –** Woolworths Group presented evidence from Professor Ryan, then Professor at the Institute for Public Policy and Governance at the University of Technology Sydney, and a qualified social worker, social researcher and social planner. Professor Ryan travelled to Darwin in December 2018, and conducted consultations with the Northern Territory Police, the Airport Development Group, service providers familiar with the area (in her own words), and with Bagot, Kulaluk and Minmarama Park. Professor Ryan's analysis found that a projected net increase in alcohol sales would be unlikely to have an adverse impact on at-risk communities. She also found that a Darwin Dan Murphy's was not likely to generate risk of harm to at-risk communities because it would be no more attractive as a source of alcohol than other outlets. Professor Ryan's rationale was that drinkers seeking the cheapest source of alcohol face the same minimum unit price at Dan Murphy's as elsewhere; and the high responsible service of alcohol standards and security enforced at Dan Murphy's would prevent the sale of problematic products and sales to at-risk consumers. Professor Ryan also found additional harm to the broader community unlikely, due to a decrease in store density in the most populated and accessible areas (from the substitution of BWS Stuart Park). She found that the most likely increases of sales from a Dan Murphy's store were likely to reflect premiumisation, which was "not productive of harm". Professor Ryan said that to the extent the proposed development resulted in an increase in alcohol consumption, it was likely to be in relation to well-educated, relatively affluent consumers of wine (in particular, men over the age of 60). In relation to this at-risk group, the proportion of risky consumption was likely to be small. Professor Ryan also asserted that there was no evidence to suggest that risky consumption by members of this group was likely to cause any additional risk of significant harm to others in the form of, for example, increased domestic violence or other criminal behaviour.
- **Evidence from a member of Northern Territory Police –** Northern Territory Police Commander Travis Wurst suggested that whether or not the Darwin Dan Murphy's was built in the proposed location, the long-term behaviours of those who frequented the area (individuals who participated in 'drinking camps') were not expected to change.

Professor Ryan acknowledged that the Bagot, Kulaluk and Minmarama Park communities were specific groups of people in relation to which the risk of harm needed to be specifically considered.

Alcohol availability and increased consumption

Woolworths Group also argued that the Liquor Commission should not accept evidence presented by the objectors' key expert witnesses in respect of the likely impact of the store and alcohol-related harm. It also rejected the suggestion that the Darwin Dan Murphy's development would result in a significant increase in alcohol consumption in the area surrounding the store. Its position was that the greater proportion of the estimated turnover of the development would be cannibalised and diverted from existing liquor outlets, including existing BWS outlets. More broadly, it pointed to declining levels of alcohol consumption, including figures showing a 3.8 per cent decline in the volume of sales within the Darwin market between 2017 and 2018.²³¹

Evidence was also submitted from a consumer behaviour analyst who suggested that the liquor market was becoming more fragmented and that there was strong growth in the consumption of artisan or craft products, local products and niche products. Evidence was presented that the volume of liquor sold in Tasmania had declined by 0.3 per cent in 2018 after a Dan Murphy's opened in Launceston in the week commencing 13 November 2016, and that the amount spent on liquor in Tasmania had increased by 3.45 per cent over the previous two years. These statistics represent premiumisation trends.²³²

Evidence was also provided in regard to the trade patterns and the typical spending habits of Dan Murphy's consumers. Representatives from Endeavour explained that while Dan Murphy's customers may buy larger quantities of liquor on a single visit, they shop less often. In contrast, customers of smaller, convenience-style liquor stores, such as BWS, shop more often but buy smaller quantities.

7.8 Objectors' evidence

The Liquor Commission received 18 objections to Woolworths Group's substitution application, including from the Foundation for Alcohol Research and Education (FARE), the Public Health Association Australia, Danila Dilba Health Service, Northern Territory Council of Social Service (NTCOSS), the Association of Alcohol and Other Drugs Agencies Northern Territory, Aboriginal Medical Services Alliance Northern Territory (AMSANT), Amity Community Services and RAAF Darwin Golf Club.²³³

The Liquor Commission also heard evidence from other objectors, including most importantly, Helen Fejo-Frith (from the Bagot community), Helen Secretary (Chair of the Gwalwa Daraniki Association) and representatives from Australian Hotels Association (NT Branch).²³⁴

²³¹ Decision of the Northern Territory Liquor Commission dated 20 September 2019, paragraph [239]

²³² Decision of the Northern Territory Liquor Commission dated 20 September 2019, paragraph [243]

²³³ Decision of the Northern Territory Liquor Commission dated 20 September 2019, paragraph [22]

²³⁴ Decision of the Northern Territory Liquor Commission dated 20 September 2019, paragraph [23]

A significant amount of expert evidence was submitted from health experts who objected to the proposed development, including Dr Chris Morrison, Dr Michael Livingston, Dr Sarah Giles, Professor James Smith, Professor Peter Miller and Professor Peter Phibbs. Expert evidence was also provided in relation to the economic and social impacts of the proposed development, including from Dr Alison Ziller, Rick Basheer, Dr Rhonda L. Smith, Paul Tisato and Dr Christopher Morrison.

The objectors presented evidence discussing the local impacts of big box liquor outlets and the broader social and economic impacts. Dr Livingston referred to the fact that the Northern Territory had the highest rates of alcohol-related harm in Australia and referenced Northern Territory Police data demonstrating that during the previous three years, there had been an increase in alcohol-related crimes including domestic violence assaults, sexual assaults, other assaults, robberies and other offences. He referred to research suggesting that 80 per cent of alcohol consumed in Australia was sold at packaged liquor outlets (with this proportion steadily increasing). He also referred to international research linking the density of alcohol outlets in a neighbourhood to the rate of alcohol-related problems experienced in that neighbourhood. Further, he asserted there was strong and consistent evidence that major changes in the retail availability of alcohol changes drinking behaviour. He referred to a study he had conducted in Melbourne on postcode-level relationships between outlet density and a series of outcomes. The study showed positive associations over time between the density of outlets for packaged liquor and rates of domestic violence, general assaults and alcohol-specific chronic disease.

Dr Livingston also acknowledged that the connection between alcohol availability and alcohol-related harm remained contested. He gave evidence that recent national data that indicated declining consumption in recent years (corresponding to a growth in alcohol outlet numbers) threw doubt on the connection between increased alcohol availability and increased harm. While expanding alcohol availability may affect the consumption of only a small number of marginalised or heavy drinkers, he conceded that the impact on the majority of the population may be limited.

In addition, Professor Smith provided evidence about the social and economic costs arising from alcohol consumption. He pointed to tangible and intangible costs, noting that the total social costs of alcohol in the Northern Territory in 2015–16 were \$1.3 billion, with tangible costs of \$701.3 million and intangible costs of \$685.5 million. He explained that the bulk of the impacts of alcohol use fall on households due to the preponderance of intangible costs, while the greatest share of tangible costs fall on the Northern Territory Government, which bore a tangible cost of \$228 million in 2015–16 through increased expenses.

7.9 Summary of the Liquor Commission decision

On 20 September 2019, the Liquor Commission refused Woolworths Group's substitution application. The Liquor Commission determined that on the balance of probabilities, Woolworths Group had not shown that the benefits to be derived from granting the application outweighed the potential for a significant increase in harm due to the use of liquor, over and above that already occurring within the relevant community areas.

In making its decision, the Liquor Commission was required to apply the public interest and community impact test as relevant to Woolworths Group's application. This required consideration of the matters set out in the community impact assessment guidelines, published by the Northern Territory Government. Those guidelines included the potential harm or health impact that may be caused to people, or any group of people within the local community area, due to the availability and accessibility of an additional liquor outlet. This included any at-risk groups and sub-communities within the locality, including, among other groups, Aboriginal people normally resident within the locality, and those who were likely to travel to the locality from a dry community. The guidelines also required consideration of the community buildings, facilities and areas within the locality such as schools, educational institutions, childcare centres and recreational areas.

Application of the moratorium provisions

As part of its decision, the Liquor Commission considered a number of preliminary issues relating to Woolworths Group's substitution application. One of the issues was whether the moratorium on new takeaway liquor licences applied to Woolworths Group's substitution application. In the course of the hearing, the objectors argued that section 46A of the *Liquor Act 1978* only provided for a geographic shift of a 'like for like' licence. They asserted that the transfer of Woolworths Group's licence was the practical equivalent of transposing one licence at a location and replacing it with nine licences at another location. They also pointed to the development's projected sales, noting that approving the application would have the practical effect of replacing one licence with 48 licences.

The Liquor Commission determined that Woolworths Group was permitted to apply for the transfer or substitution of an already existing takeaway licence. It noted that the wording of the moratorium provision applied only to “new takeaway liquor licences” and that the legislature did not see fit to restrict or prohibit the transfer and substitution of takeaway liquor licences during the moratorium.²³⁵ It also accepted Woolworths Group’s submission that the moratorium sought to minimise the risk of harm by fixing the maximum number of takeaway licences for a five-year period; however, there was no limit on the scale and nature of the changes that may be made to existing takeaway licences.²³⁶

Representatives from Woolworths Group informed the Panel that the decision to pursue a substitution application was made in 2016 and influenced by the fact that the BWS store at Stuart Park was underperforming, the lease was coming to an end and the licence held was a standalone licence (rather than a grocery store licence). This was considered to be a conventional approach across all jurisdictions when pursuing new liquor outlets, given that regulatory authorities are often concerned about the proliferation of new liquor licences. After the Riley Review recommendations in October 2017, Woolworths Group received advice that the Riley Review did not change its existing strategy of pursuing a substitution of premises application.

It is clear that the Riley Review’s recommendations and the impact of pursuing the substitution application route, while entirely legal, was seen by some objectors to frustrate or subvert the findings of the Riley Review. The point was strongly made that the Riley Review and the policy considerations that informed the Riley Review, should have been closely considered by Woolworths Group, especially in relation to the five year moratorium on new liquor outlets.

Benefits versus harms

In making its decision, the Liquor Commission considered both Woolworths Group’s and the objectors’ evidence, assessing the potential benefits and harms associated with the proposed development against the relevant public interest and community impact criteria.

In summary, the Liquor Commission considered the following factors:

- **Volume of alcohol consumption** – that the new proposed store would sell significantly higher volumes of alcohol than the old BWS Stuart Park store. While the Liquor Commission accepted that

alcohol consumption in the Northern Territory had declined over the previous 10 years, it referred to the fact that the population was still consuming alcohol at a per capita rate that was 20 per cent higher than in the rest of Australia.²³⁷ While overall consumption was declining in the Northern Territory, there was no evidence that this trend applied to the cohorts of ‘problem drinkers’. In addition, the Liquor Commission doubted that the trend of premiumisation could be applied in the Northern Territory. It referred to the fact that the Northern Territory was bucking the national trend towards boutique and craft beer, with the already low sales of these products declining over the previous year.²³⁸

- **Increased harm** – that great weight was placed on expert evidence provided by the objectors, who referred to the economic and social costs that could result from the store’s presence and the increased alcohol availability in the surrounding communities.
- **Impact on pricing** – that the store would encourage cheaper alcohol prices, due to Woolworths Group’s buying power and Dan Murphy’s reputation for selling low-priced beer. The Liquor Commission also pointed to the flow-on effect this would have on the market, with competitors likely to reduce prices to maintain market share. It also referred to the fact that 28.29 per cent of the store’s retail floor space would be devoted to beer sales.²³⁹
- **Density of liquor outlets** – that the presence of the store would result in a 25 per cent increase in the density of liquor outlets in the 25-kilometre trade area, an 80 per cent increase in the density of liquor outlets in the 5-kilometre community area, and a 400 per cent increase in the density of liquor outlets in the 2-kilometre surrounding community area. The Liquor Commission considered that outlet density was relevant as a predictor of increases in the volume of liquor sales for risky drinkers and associated harms. Significant weight was placed on evidence from Dr Livingston on this issue, with the Liquor Commission finding that a significant increase in the density of liquor outlets was bound to reduce prices for alcohol in the local community, in turn allowing problem drinkers to access more alcohol for the money they had available, subject to the constraints of the Minimum Unit Price.²⁴⁰
- **Risk mitigation measures** – the Liquor Commission accepted that Woolworths Group had a proven track record in the Northern Territory as a responsible licensee and that it would continue to comply with its obligations under the Liquor Act and the terms of any

235 Decision of the Northern Territory Liquor Commission dated 20 September 2019, paragraph [113]

236 Decision of the Northern Territory Liquor Commission dated 20 September 2019, paragraph [114]

237 Decision of the Northern Territory Liquor Commission dated 20 September 2019, paragraph [238]

238 Decision of the Northern Territory Liquor Commission dated 20 September 2019, paragraphs [243]–[246]

239 Decision of the Northern Territory Liquor Commission dated 20 September 2019, paragraphs [260]–[264]

240 Decision of the Northern Territory Liquor Commission dated 20 September 2019, paragraphs [278]–[281]

licence. However, the Liquor Commission referred to the fact that even Woolworths Group's expert witness, the National Manager Responsible Service, Endeavour, had acknowledged that whatever risk mitigation strategies could be achieved, it would be no different from measures currently being carried out in Woolworths Group's BWS stores.²⁴¹

- **Consumer benefits** – while the store would result in some benefits to consumers due to increased competition among liquor outlets, this had to be weighed with the harm posed to problem drinkers.
- **Economic considerations** – the Liquor Commission accepted that the store would provide benefits, including 80 construction jobs. However, it also pointed to the likely decline and loss of jobs at other liquor outlets. It also queried the number of jobs that would be created in light of Dan Murphy's streamlined checkouts and efficient staffing.

As noted above, the Liquor Commission was required to consider if Woolworths Group had established that on the balance of probabilities, the potential benefits of granting the application outweighed the potential increase in harm due to the use of liquor, over and above that already occurring within the relevant community areas. In deciding to reject Woolworths Group's application, the Liquor Commission found that the proposed store would increase the consumption of alcohol by problem drinkers in the community.

Significant weight was given to the evidence provided by Ms Helen Fejo-Frith and Ms Helen Secretary in relation to the impact of alcohol on local Aboriginal and Torres Strait Islander communities. The Liquor Commission also placed significant weight on evidence from Dr Livingston, who discussed the links between alcohol availability and increased harm for problem drinkers, as well as Professor Smith, who provided evidence about the social and health impacts of the proposed development.

7.10 Liquor Act 2019

Following the Riley Review, the Liquor Act was amended to provide a coherent framework for the operation and regulation of the liquor industry based on harm minimisation principles. The *Liquor Act 2019* (NT) (*Liquor Act 2019*) commenced on 1 October 2019, two weeks after the decision of the Liquor Commission was made in relation to Woolworths Group's substitution application.

In the Second Reading Speech for the Bill for the *Liquor Act 2019*, the Hon. Natasha Fyles, Attorney-General and Justice Minister, noted:²⁴²

“Territorians have had enough of alcohol-fuelled crime. This government is tackling the causes of crime and social dysfunction through a plan to combat alcohol abuse and investing in appropriate rehabilitation strategies based on evidence and the findings from the Riley Review on Alcohol Policies and Legislation 2017. We have a strong plan to reduce alcohol-related crime and violence, based on the 219 accepted recommendations from the government-commissioned Riley Review.”

- The Hon. Natasha Fyles, Attorney-General and Justice Minister, Second Reading Speech for the Bill for the Liquor Act 2019 (NT), p.1”

The *Liquor Act 2019* requires decision makers to act in a way that is consistent with the primary and secondary purposes of the Act. These purposes seek to balance the goals of harm minimisation with recognition of the public's interest in the sale, supply, service, promotion and consumption of liquor.²⁴³ The *Liquor Act 2019* also established the position of the Director of Liquor Licensing (the Director).²⁴⁴ The Northern Territory Government announced that this role was created to “exclusively manage liquor compliance and enforcement”.²⁴⁵ This is in stark contrast to the role of the Director of Liquor Licensing in the November 2020 amendment to the *Liquor Act 2019*, where this role is that of sole decision-maker as well.

Public interest and community impact assessment

In accordance with the recommendations of the Riley Review, the *Liquor Act 2019* requires consideration of the public interest and community impact test. It provides that the Liquor Commission may only issue a licence or an authority if satisfied, among other things, that:²⁴⁶

- a. the applicant is a fit and proper person;²⁴⁷

241 Decision of the Northern Territory Liquor Commission dated 20 September 2019, paragraph [214]

242 Second Reading Speech for the Bill for the *Liquor Act 2019* (NT), p. 1

243 Sections 3(2)-(3) of the *Liquor Act 2019* (NT)

244 Section 9 of the *Liquor Act 2019* (NT)

245 Northern Government Newsroom (2019), 'Cutting Crime and Antisocial Behaviour: New Liquor Act Passed in Parliament'

246 Section 49(1) of the *Liquor Act 2019* (NT)

247 Section 51(3) of the *Liquor Act 2019* (NT) provides that a licensee who is applying for an authority is assumed to be a fit and proper person, in the absence of evidence to the contrary

- b. issuing the licence or authority is in the public interest; and
- c. the licence or authority will not have a significant adverse impact on the community.

It is open to the Liquor Commission to mitigate a possible adverse impact on the community by issuing a licence or authority with conditions that limit the types of liquor that may be sold at a liquor outlet or the way in which the liquor may be sold.²⁴⁸ The onus for proving that a licence or authority is in the public interest and will not have a significant adverse impact on the community is placed on the applicant.²⁴⁹

The *Liquor Act 2019* also continued with a number of provisions that had been recommended by the Riley Review and incorporated into the *Liquor Act 1978*, including the minimum sale price and that no takeaway authority may be created or issued until after 31 August 2023 or any later date extended by regulation.²⁵⁰

7.11 Applications to the Northern Territory Civil and Administrative Tribunal

On 18 October 2019, Woolworths Group lodged an application for review to NTCAT of the Liquor Commission's decision.²⁵¹ The NTCAT review largely turned on a procedural issue, concerning whether Woolworths Group could make the substitution application in relation to a premises that did not currently exist.²⁵²

NTCAT dismissed Woolworth Group's application on the basis that neither the Liquor Commission nor NTCAT had power to entertain such an application, where the proposed new licensed premises were non-existent and had not yet been constructed.²⁵³ It emphasised that the decision had nothing to do with whether or not NTCAT agreed with the Liquor Commission's decision, or whether it thought the proposed development would be a good idea.²⁵⁴

While NTCAT proceedings focused on procedural issues, Woolworths Group submitted additional expert evidence from town planner Graham Ashley Burns, which was intended to update the town planner report submitted during the Liquor Commission proceeding. Mr Burns reviewed various materials and also visited Darwin in September 2020 to inspect the former site of the BWS

Stuart Park and the proposed site for the substituted licence, as well as all other relevant licensed takeaway liquor premises within a 25-kilometre radius of the proposed site of the substituted liquor licence. He also inspected two Dan Murphy's stores and one First Choice Liquor store in Cairns. He provided evidence relating to:

- **the amenity of the Darwin Dan Murphy's** – he concluded that none of the licensed premises in the area of the proposed store (such as drive-through liquor outlets, clubs, Coles Liquorland and Woolworths Group's BWS stores) offered the combination of a wide product range, store ambience/amenity, staff knowledge or sense of safety and security that would be offered by a liquor outlet such as Dan Murphy's or First Choice.
- **the Bagot community** – he explained that the nearby Aboriginal and Torres Strait Islander community, Bagot, was disadvantaged in terms of unemployment, education and employment participation rates (although, his report did not consider the potential impact of the store on the Bagot community). Mr Burns noted that he could not analyse the smaller Kulaluk and Minmarama Park communities for privacy reasons, and that data relating to those communities was not available.
- **Crime prevention through environment design principles** – he outlined that the Dan Murphy's development had been designed with an emphasis on crime prevention through environmental design (CPTED) principles to minimise harm. This included the use of four key strategies of surveillance and lighting, territorial reinforcement, space/activity management and access control.
- **a comparison between Darwin and Cairns** – he compared the socio-demographic profiles of Cairns and Darwin, concluding that Darwin outweighed Cairns in four indices of socio-economic advantage. He pointed out that Cairns, which he considered to be more socially disadvantaged than Darwin, had three big box liquor stores – two Dan Murphy's stores and one First Choice outlet.

Woolworths Group once again engaged Professor Ryan, who considered that the Liquor Commission's decision should be evaluated in terms of the anticipated levels of alcohol-related harm in the three nearest at-risk Aboriginal and Torres Strait

248 Section 49(4) of the *Liquor Act 2019* (NT)

249 Section 51 of the *Liquor Act 2019* (NT)

250 Section 84(3) of the *Liquor Act 2019* (NT)

251 Decision of the Northern Territory Civil and Administrative Tribunal dated 23 December 2019, paragraph [16]

252 Decision of the Northern Territory Civil and Administrative Tribunal dated 23 December 2019, paragraph [21]

253 Decision of the Northern Territory Civil and Administrative Tribunal dated 23 December 2019, paragraph [112]

254 Decision of the Northern Territory Civil and Administrative Tribunal dated 23 December 2019, paragraphs [5]–[8]

Islander communities; gathering further evidence on how those harms may or may not be mitigated by measures proposed by Woolworths Group; and what measures (if any) Woolworths Group can undertake with the communities to alleviate harms.

7.12 Appeal to the Supreme Court of the Northern Territory

On 7 January 2020, Woolworths Group filed an application with the Supreme Court of the Northern Territory seeking leave to appeal NTCAT's decision regarding the interpretation of section 46A of the *Liquor Act 1978*.²⁵⁵

On 26 March 2020, the *Liquor Amendment Act 2020* (NT) commenced. This Act clarified the issues surrounding the substitution of liquor licences and addressed the issues that were the subject of the Supreme Court proceedings. Relevantly, the Act empowered the Liquor Commission to approve a substitution of premises application to premises that were not yet constructed or under construction.²⁵⁶ The Act also created transitional arrangements to allow applicants with ongoing applications to substitute premises to apply for a rehearing by NTCAT under the amended legislation.²⁵⁷ As this resolved the issues in dispute in the Supreme Court matter, the parties discontinued the proceedings by consent in April 2020.²⁵⁸

7.13 Second review by NTCAT

On 23 April 2020, Woolworths Group filed a second application with NTCAT, again seeking a review of the Liquor Commission's decision of September 2019. Woolworths Group sought to set aside the Liquor Commission's decision for a decision to approve the substitution of the BWS Stuart Park licence to the original proposed development on Bagot Road, Eaton.²⁵⁹ The review was scheduled for a hearing in December 2020²⁶⁰ – however, it was subsequently deferred and later abandoned in light of Northern Territory Airports' shift in support for the proposed site and further amendments to the *Liquor Act 2019* made on 20 November 2020, which enabled the making of the Director's decision on 17 December 2020.

7.14 Woolworths Group's conduct and approach to the liquor licence substitution application

From the outset, Woolworths Group had a narrow focus on mitigating and managing alcohol-related harm at the point of sale and surrounds, which shaped its approach to the consultation process and engagement with local communities. When Endeavour representatives and experts sought to consult with local Aboriginal and Torres Strait Islander communities, these discussions were conducted within the framework of harm minimisation strategies and policies to reduce alcohol-related harm. Put simply, there was never any discussion about whether these communities wanted or needed the store in the first place.

Woolworths Group was not able to address concerns about the symbolic nature of a Dan Murphy's store as a large retailer of alcohol into communities where, in the minds of many, alcohol was too readily available already. This issue points in the direction of legitimacy and social value, as discussed in Chapter 1. In addition, the focus on harm minimisation at the point of sale meant that Woolworths Group did not sufficiently engage with broader concerns about alcohol-related harm that were presented by representatives from health organisations, social service groups and members of the local community during the Liquor Commission hearing. Woolworths Group relied on evidence which disputed the link between increased liquor outlets and increased harm. It argued that the Liquor Commission should reject the substantial body of evidence presented by health and medical experts and pursued multiple appeals of the Liquor Commission's decision. This approach overshadowed the possibility of deeper considerations of the public interest and, at the very least, perceptions of harm as articulated by health experts. It fostered a divide between itself and representatives from health organisations and social service groups, and other experts. In the course of the interviews conducted by the Panel, a consistent theme was that these individuals felt they weren't being listened to, and that their genuine concerns and objections (formed from working for many years on the ground in the Northern Territory) were discarded and disrespected. Furthermore, they believed that Woolworths Group as a responsible company ought to have accepted the decision of the Liquor Commission to reject its application and left the matter there.

255 Decision of the Director of Liquor Licensing dated 17 December 2020, paragraph [17]

256 Section 75(2) of the *Liquor Act 2019* (NT), as amended by the *Liquor Amendment Act 2020* (NT); Decision of the Director of Liquor Licensing dated 17 December 2020, paragraph [18]

257 Section 326 of the *Liquor Act 2019* (NT), as amended by the *Liquor Amendment Act 2020* (NT)

258 Decision of the Director of Liquor Licensing dated 17 December 2020, paragraph [19]

259 Decision of the Director of Liquor Licensing dated 17 December 2020, paragraphs [20]–[21]

260 Decision of the Director of Liquor Licensing dated 17 December 2020, paragraph [22]

Following the Liquor Commission's decision, the Northern Territory Government released a statement calling the decision "a kick in the guts for responsible drinkers, who want more choice in the Darwin market", noting that it was open to Woolworths Group to appeal the decision.²⁶¹ Given the significant impact of alcohol-related harm in the Northern Territory, a balanced and considered description of the situation would seem to have been more appropriate.

"The Dan Murphy's development must be seen against the context of the Riley Review and the efforts to reduce alcohol supply... The idea of adding an alcohol megastore in a jurisdiction that is battling to stop people drowning in alcohol is not a great idea for me. If Woolworths wants to demonstrate being a good corporate citizen and recognise issues in the NT, it should respect and listen to the decision of the independent Liquor Commission. There is a change towards good corporate social responsibility."

- Peter Burnheim, Executive Officer, Association of Alcohol and Other Drug Agencies Northern Territory (8 March 2021)

Corporations are entitled to pursue legal outcomes that support and benefit their business strategies. However, Woolworths Group has set itself the task of being an outstanding corporation concerned with the impact it has on people's lives, acting in the best interest of the Australian community. To meet this 'higher bar', Woolworths Group needed to genuinely engage with and respond to the concerns raised by key interest groups, including health and medical experts, even where such matters extend beyond the minimum legal requirements.

"We listen to the medical experts in managing the COVID pandemic - Why rely on Woolworths evidence but not that of the medical experts when it comes to establishing a Dan Murphy's outlet in Darwin."

- Thomas Mayor, National Indigenous Officer, Maritime Union of Australia (3 March 2021)

Endeavour representatives considered the Liquor Commission's decision contained legal errors, due in part to the manner in which the Liquor Commission conducted the hearing and consequently Woolworths Group sought a review of that decision by NTCAT. However, it can be said that the Liquor Commission hearing was a wide-ranging review of all the issues at hand. It is clear that the Liquor Commission took considerable care to ensure that the public interest and community impact test was a central part of the decision-making framework that was adopted. It could be safely argued that the Liquor Commission correctly applied the public interest and community impact test. Even though Woolworths Group decided to challenge this decision, these matters alone should have been reason enough for the company to pause and give deeper consideration to the broader issues raised in this decision. This did not seem to occur. At this juncture, Woolworths Group should have considered initiating a deep dive into all aspects of the Dan Murphy's development with some independent oversight and advice.

261 Northern Territory Government Newsroom (2019), 'Statement of Liquor Commission's Dan Murphy Decision'

8

Review of the 2020 Legislative Changes and the Decision of the Director of Liquor Licensing

This chapter explores the engagement of Woolworths Group with the Northern Territory Government about the Dan Murphy's development, including amendments to the relevant liquor licensing laws during 2020 and the quality of those amendments from a public policy perspective. The overall effect of the legislative amendments resulted in a special statutory framework that gave the Director of Liquor Licensing broad discretion to determine Woolworths Group's application and three other historical licence applications. The Director was unconstrained by many of the usual public policy requirements imposed on liquor licensing decisions and those considered in the Riley Review. There are a number of aspects of the Director's decision that raise concerns. While it is entirely legally defensible for Woolworths Group to rely on the Director's decision, the question remains whether Woolworths Group can be satisfied that the standard set by community expectations will have been met given the significant problems associated with alcohol and the high-water mark set by the Riley Review. Certainly, the standards displayed by the Legislature and the consequent decision of the Director of Liquor Licensing were serious departures from the recommendations of the Riley Review and as subsequently adopted in legislation. These were matters in the minds of some of the objectors and other stakeholders who spoke with the Panel.

8.1 Changing the Liquor Act

Two key changes to the Northern Territory's liquor licensing laws in 2020 aided Woolworths Group's application for the Dan Murphy's development. The changes were introduced by the *Liquor Amendment Act 2020* (NT) and the *Liquor Further Amendment Act 2020* (NT).²⁶²

The *Liquor Amendment Act 2020* commenced on 27 March 2020 to allow the Liquor Commission to approve substitution of premises where the proposed premises are yet to be constructed or are still under construction, and other amendments of a procedural nature.²⁶³

The *Liquor Further Amendment Act 2020* commenced on 20 November 2020. Most significantly it:

- created a process for expediting the determination of the remaining four historical applications concerning the substitution of licensed premises awaiting rehearing by NTCAT, being applications by Woolworths Group, Liquorland Australia Pty Ltd, Pirlangimpi Community Club and, jointly Little Cashy Pty Ltd and Dunstall Pty Ltd;²⁶⁴
- gave the Director of Liquor Licensing the power to make a decision without prior notice to the applicant or any other person or body, and without holding a hearing;
- provided that the four remaining historical applications would not be within the jurisdiction of the independent Liquor Commission and that any decision of the Director of Liquor Licensing would not be reviewable by NTCAT; and
- required the Director of Liquor Licensing to determine the applications on an expedited basis within 30 days of 20 November 2020.

Accordingly, Woolworths Group's application for the substitution of licensed premises was required to be determined by the Director on an expedited basis.

8.2 Assessing the legislative process and public policy

Given the contents and recommendations of the Riley Review and their inclusion in subsequent legislation, the Panel believes that the legislative amendments enacted by the Northern Territory Legislative Assembly in November 2020 did not, for the following reasons, constitute good public policy. Several stakeholders who consulted with the Panel expressed similar reservations.

Abbreviated and inflexible deadline

An inflexible legislative deadline for making an administrative decision may sometimes be appropriate. There was nothing in this matter that warranted expedited determination, within 30 days of 20 November 2020. There was no provision to extend that period, even if an extension was necessary or appropriate to properly determine the applications.

In the Second Reading Speech to the Bill for the *Liquor Further Amendment Act 2020*, the Minister for Small Business indicated that the objective of the legislation was "finally bringing these longstanding issues to a close" and stated that "Territory businesses need an answer on these issues immediately so that they can make informed investment decisions and start contributing to our economic recovery as soon as possible".²⁶⁵ A political imperative for the prompt determination of outstanding liquor licensing applications may be understandable, however these matters did not warrant such an abbreviated and inflexible deadline.

Taking the decision away from the Liquor Commission

The effect of the *Liquor Further Amendment Act 2020* in November 2020 was to remove the jurisdiction of the independent Liquor Commission and impose a new, abbreviated procedure for the Director of Liquor Licensing to determine applications. The usual position is that the Director does not have any role or function as the decision maker in the determination of applications, but ordinarily participates in proceedings before the Liquor Commission in respect of such decisions.²⁶⁶ Furthermore, the Director's role is to administer the functioning of the Liquor Act in regard to the liquor regime operating in the Northern Territory. Importantly,

²⁶² *Liquor Amendment Bill 2020* (NT), Explanatory Statement

²⁶³ Section 326 of the *Liquor Act 2019* (NT), as amended by the *Liquor Amendment Act 2020* (NT)

²⁶⁴ The *Liquor Further Amendment Bill 2020* (NT) as originally tabled in the Northern Territory Legislative Assembly referred to applications for the substitution of premises that were subject to a rehearing by NTCAT under section 326(4) of the *Liquor Act 2019* (NT); and applications for variation of licence conditions that had not yet been determined. Minister Kirby amended the Bill on the floor of the Legislative Assembly to include applications for the substitution of premises that were subject to review by NTCAT under section 31 of the *Liquor Act 2019* (NT). This amendment allowed two additional applications to be determined by the Director of Liquor Licensing under section 334 of the *Liquor Act 2019* (NT) (as amended). (See Northern Territory Legislative Assembly, *Daily Hansard*, Wednesday, 12 November 2020 – Meeting No. 6, p. 68)

²⁶⁵ Northern Territory Legislative Assembly, *Daily Hansard*, 11 November 2020, Meeting No 5, pp. 1–2. In November 2020, the Minister for Small Business used notably different language to that used in 2019 by the Attorney-General and Justice Minister in the Second Reading Speech for the Bill for the *Liquor Act 2019*, which refers to the government's plan to tackle crime and social dysfunction by combatting alcohol abuse based on the findings of the Riley Review

²⁶⁶ See Section 10 of the *Liquor Act 2019* (NT)

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one of the key recommendations of the Riley Review was that hearings should be open and transparent and determined by an independent body.²⁶⁷ The Northern Territory Government accepted this important recommendation and yet materially departed from this standard in relation to these further amendments.

“There is a direct relationship between the ability of Woolworths to open a mega alcohol store like Dan Murphy’s in Darwin against the wishes of the majority of the Aboriginal community, and the failure of the Northern Territory Government (through many governments) to implement policies that protect the population from the harmful impacts of alcohol. The Northern Territory Government has had many opportunities to implement policies across the Northern Territory that prevent dangerous levels of alcohol consumption in a small proportion of the population, and it has repeatedly failed to do so.

You’ll find government manoeuvres in every alcohol policy. Alcohol policy has never served the public interest except for one or two measures. You can have public health policy on alcohol, or alcohol outlets selling alcohol on the grounds that it’s good for business and tourism, but you can’t have both. The Government has always sided with the alcohol industry on the basis that it’s good for the economy... The Northern Territory Government always sides with contestable economic arguments about alcohol, ignoring the terrible [health impacts] costs it might have.”

- Professor Marcia Langton AM, University of Melbourne (4 March 2021)

The Explanatory Statement to the Liquor Further Amendment Bill 2020 does not explain or justify the significant deviation from the usual position of the decision maker being the independent Commission. The *Liquor Commission Act 2018* established a decision-making structure in which licensing decisions are to be made by a multi-member Liquor Commission and a process required

to include at least one person with health expertise.²⁶⁸ The legislative policy of the *Liquor Commission Act 2018* involved recognising that good decision-making in the context of liquor licensing is promoted by a multi-member decision-making panel with legal and health expertise.

In contrast, the amendments to the legislation in November 2020 involved the ad hoc removal of certain applications from the jurisdiction of the Liquor Commission and required the determination of applications to be the decision of a single person, the Director of Liquor Licensing, who is not a member of the Liquor Commission. The Panel members are not aware of any explanation or justification by the Northern Territory Government for that substantial change, which runs counter to the sound legislative policy, based on the Riley Review, of the *Liquor Commission Act 2018*.

Diluting consideration of public interest and community impact

The November 2020 amendments to the legislation provided that the Director may, “but is not required to”, consider and be satisfied in relation to public interest and community impact provisions.²⁶⁹ On the other hand, the Liquor Commission, in the ordinary course of its role, must consider public health and the safety, welfare and amenity of the people and communities who will or may be affected. It is poor public policy that the obligations imposed on an independent commission should be of a greater standard than those imposed on a statutory officer of the liquor licensing authority acting on their own.

The effect of this legislative change meant that, in this instance, the public interest and community impact requirements became merely discretionary or permissible considerations by the Director, rather than mandatory considerations. This was a significant departure from the strong recommendations of the Riley Review and the amendments to the legislative framework put in place following that review.

Removing the requirement to give notice

The legislative amendments permitted the Director to determine the applications without further notice to the applicant or any person, and without holding a public hearing.²⁷⁰ This complemented both the exclusion of the rules of natural justice,²⁷¹ discussed below, and the requirement for expedited decision-making.^{272, 273}

²⁶⁷ Northern Territory Government (2017), ‘Alcohol Policies and Legislation Review – Final Report’, recommendations 2.21 and 2.25

²⁶⁸ Section 7(5) of the *Liquor Commission Act 2018* (NT)

²⁶⁹ Section 334(7) of the *Liquor Act 2019* (NT); Section 49 of the *Liquor Act 2019* (NT)

²⁷⁰ Section 334(8) of the *Liquor Act 2019* (NT)

²⁷¹ See Section 334(9) of the *Liquor Act 2019* (NT)

²⁷² See Section 334(2) of the *Liquor Act 2019* (NT)

²⁷³ It may be noted that in the usual case of an application to substitute premises, the Commission is not required to hold a hearing but may do so if the Commission considers it appropriate. See sections 75(3) and 115(1) of the *Liquor Act 2019* (NT)

“The government should have sat down and thought what harm will this do to Territorians, what effect would this have if we build a big Dan Murphy’s here... They need to deal with the problem. Supporting barn sized outlets – we’re not boozy people.”

- Charlie King OAM, Broadcaster and Founder, NO MORE Campaign (11 March 2021)

Excluding natural justice

The November 2020 amendment to the legislation provided that in relation to the four pending matters, including the Woolworths Group’s Dan Murphy’s application, the rules of natural justice did not apply to a decision of the Director.²⁷⁴ The rules of natural justice, which are often also referred to as the principles of procedural fairness, are widely regarded as very important principles that promote fair procedure and good decision-making.

“In broad terms, [the rules of natural justice] require that people be afforded a hearing that is fair and without bias before decisions which affect them are made... [this] principle of common sense and common decency is shared by all democratic societies and their systems of jurisprudence [and that is] part of the fabric of the common law.”

- Aronson, Groves and Weeks, Judicial Review of Administrative Action and Government Liability, Sixth Edition, 2017 at [7.10]

The common law will usually imply that a power conferred by statute is to be exercised with procedural fairness in relation to those parties whose interests may be adversely affected by the exercise of that power.²⁷⁵ The express exclusion of the rules of natural justice may validly be done by statute. However, it is a significant departure from good practice for a legislature to take, especially given the history of alcohol abuse in the Northern Territory and widespread community concerns about the proliferation

of alcohol and its impact especially, but not exclusively, on Aboriginal and Torres Strait Islander communities.

Removing review by the Northern Territory Civil and Administrative Tribunal

The amendments to the legislation in November 2020 provided that any determination or decision of the Director “is not reviewable by NTCAT”.²⁷⁶ This is a poorly considered provision. Ordinarily, any decision of the Liquor Commission for which a decision notice is required is reviewable by NTCAT.²⁷⁷ However there is no provision in the amendments to the legislation in November 2020 for decisions of the Director to be reviewable by NTCAT in any event. This procedural drafting oversight notwithstanding, the decision of the legislature to make the Director’s decision non-reviewable by NTCAT flies in the face of the entire statutory regime, which, consistent with sound public policy, provided for applications for review from the Liquor Commission to NTCAT.

Terminating the existing review to the Northern Territory Civil and Administrative Tribunal

During the time between the two amending Acts in 2020, Woolworths Group filed a second application with NTCAT, in April 2020, again seeking a review of the Liquor Commission’s decision in September 2019. In the second application, Woolworths Group sought to set aside the Liquor Commission’s decision and substitute it for a decision to approve the substitution of the BWS Stuart Park licence to the proposed Dan Murphy’s development on Bagot Road, Eaton.²⁷⁸

The amendments to the legislation in November 2020 had the effect of terminating the existing review by NTCAT moving the decision-making to the Director of Liquor Licensing.²⁷⁹

Unintended outcomes

While not of any materiality, it is odd that the Director is given all the powers and functions of the Liquor Commission to approve or refuse applications.²⁸⁰ However, the Liquor Commission had no such powers or functions in respect of the Woolworths Group and the other three applications in any event. This was because the jurisdiction of the Liquor Commission in respect of those applications was expressly removed by another section in the amendments to the legislation in November 2020.²⁸¹

²⁷⁴ Section 334(9) of the *Liquor Act 2019* (NT)

²⁷⁵ See *Plaintiff S10/2011 v Minister for Immigration and Citizenship* (2012) 246 CLR 636 at 666 [97]; *Re Refugee Review Tribunal; Ex parte Aala* (2000) 204 CLR 82 at 100–101 [39]–[41]

²⁷⁶ Section 334(12) of the *Liquor Act 2019* (NT)

²⁷⁷ Section 31(1) of the *Liquor Act 2019* (NT)

²⁷⁸ Decision of the Director of Liquor Licensing dated 17 December 2020, paragraphs [20]–[21]

²⁷⁹ Section 334(13) of the *Liquor Act 2019* (NT)

²⁸⁰ Section 334(6) of the *Liquor Act 2019* (NT)

²⁸¹ Section 334(3) of the *Liquor Act 2019* (NT)

8.3 Endeavour's engagement with the Northern Territory Government on legislation

It is apparent from the documents provided to the Panel that there was significant engagement between Endeavour and the Northern Territory Government in relation to the proposed Dan Murphy's development and the 2020 amendments to the *Liquor Act 2019*.

In January 2020, the Northern Territory Government engaged with Endeavour, seeking its views of appropriate legislative steps and the wording of a Bill for the *Liquor Amendment Act 2020* (NT). In February 2020, the Director of Liquor Licensing offered an opportunity to Endeavour to provide a submission to the Legislation Scrutiny Committee regarding the *Liquor Amendment Bill 2020* (NT).²⁸² The following day, the *Liquor Amendment Bill 2020* was tabled in the Legislative Assembly by the Attorney-General and Minister for Justice and referred to the Legislation Scrutiny Committee for inquiry and report. The Committee called for submissions and directly contacted a number of individuals and organisations.

On 2 March 2020, Endeavour lodged a submission to the Committee about the Government's Bill and recommended amendments to the Bill for the Legislation Scrutiny Committee's consideration. In its submission, Endeavour proposed various amendments to the Government's Bill that were procedural in nature to clarify uncertainty in the drafting of the Bill and to address legal technicalities, which it feared would delay its ongoing application. Endeavour's suggested amendments to the Bill also sought to remove the application for the Dan Murphy's development from the usual procedures of the independent Liquor Commission and have the matter decided at the discretion of the Minister. It proposed that the Minister should have the power to issue a licence and authorities to "any person on such terms and conditions that the Minister thinks fit" in relation to a significant development proposal.²⁸³

Endeavour's proposal would still have required the Minister to consider the purpose of the Act, including "to minimise the harm associated with the consumption of liquor" and "to protect and enhance community amenity, social harmony and community wellbeing through the responsible sale, supply, service, promotion and consumption of liquor". However, Endeavour's proposed amendments included that the Minister may exercise this power notwithstanding that.²⁸⁴

- an application for a licence or authority has not been submitted by a prospective licensee;
- the Minister has not notified any person, including any person who may be adversely affected, that the Minister is considering exercising this power;
- the prospective licensee has not satisfied the Minister or any other person of any matter or thing, including any matter or thing specified in Part 3, Division 4 of the *Liquor Act 2019*, which includes the public interest and community impact test;
- the issue of the licence or authority may be contrary to the limits on authorities specified in section 84 of the *Liquor Act 2019*, including the moratorium on new takeaway licences;
- the issue of the licence or authority may be contrary to or inconsistent with a decision of the Director of Liquor Licensing or the Liquor Commission under the *Liquor Act 2019* or the *Liquor Act 1978*; and
- the premises proposed to be licensed are not yet constructed or are still under construction.

The covering letter to Endeavour's 2 March 2020 submission urged that the decision about the application should be made using the Endeavour suggested new powers of the Minister "in strictly limited situations where significant development proposals are involved" that require the ability "to act in a timely manner to provide appropriate support to a development that will deliver significant benefits to the Northern Territory".

As outlined above, Endeavour's suggested amendments recommended that the Minister must consider the purposes of the Act. Nonetheless, as also outlined above, Endeavour's suggested amendments contained provisions to the effect that the Minister's proposed power was not limited by the public interest and community impact assessment provisions.²⁸⁵

Later, on 19 March 2020, Endeavour provided further detail about its submission to the Chair of the Legislation Scrutiny Committee. Endeavour urged the Legislation Scrutiny Committee to adopt Endeavour's suggested amendments to avoid the "significant risk" that the Dan Murphy's application may be delayed or defeated on technical legal grounds.

The Legislation Scrutiny Committee did not agree with Endeavour's proposed amendment, noting:²⁸⁶

282 In accordance with Standing Order 148(2) of the NT Legislative Assembly Standing Orders, the *Liquor Amendment Bill 2020* was referred to the Legislation Scrutiny Committee.

283 Legislative Assembly of Northern Territory Legislation Scrutiny Committee – Inquiry into the *Liquor Amendment Bill 2020* (NT) [3.17]; Attachment A to Endeavour Drinks' Submission to the Legislation Scrutiny Committee Inquiry into the *Liquor Amendment Bill 2020* (NT) "Significant development proposal" is defined as "a proposal in relation to premises which are proposed to be licensed under this Act which the Minister certifies as being, in the opinion of the Minister, of such a nature and scale as to be important to the Northern Territory for economic or social reasons".

284 Attachment A to Endeavour's Submission to the Legislation Scrutiny Committee Inquiry into the *Liquor Amendment Bill 2020* (NT)

285 Part 3, Division 4 of the *Liquor Act 2019* (NT) – see sections 60A(3) and (4) of Endeavour's proposed amendments to the Bill

286 Legislative Assembly of Northern Territory Legislation Scrutiny Committee – Inquiry into the *Liquor Amendment Bill 2020* [3.20]

“The amendment proposed by Endeavour Drinks would nullify the licence moratorium established under subsection 84(3) in situations where the Minister decides to exercise this power; removes the requirement to satisfy the public interest and community impact test; allows the Minister to make decisions that are inconsistent with decisions of the Liquor Commission; and removes established procedural requirements such as notifying any person, including those adversely affected, that the Minister is considering granting a licence.”

*- Legislative Assembly of Northern Territory
Legislation Scrutiny Committee Report
- Inquiry into the Liquor Amendment
Bill 2020 (NT), paragraph [3.20]*

The Committee received seven submissions opposing the Government’s Bill.²⁸⁷ Opponents identified that removing the like for like requirement on substitution of premises applications provided an opportunity to circumvent the five-year moratorium on new takeaway licences, “by enabling existing licence holders to substitute for a larger premises and increase the volume of alcohol available for sale; and is contrary to the Riley Review recommendations relating to substitution of premises”.²⁸⁸

On 27 March 2020, the *Liquor Amendment Act 2020* commenced. Notwithstanding the proposals from Endeavour and submissions from objectors, the legislation was passed in its original form.

Corporations often engage closely with governments with respect to proposed legislative and regulatory amendments that affect businesses’ interests. This is a longstanding and fairly common feature of the democratic system. Such conduct is useful and perhaps essential in a democracy. However, it can distort fairness and the processes of the legislature, as may be said to have occurred in this matter. It should be emphasised that nothing that the Panel has heard or in the information provided by Woolworths Group demonstrates or suggests any unlawful conduct in any of these respects.

While the *Liquor Further Amendment Act 2020* conferred new decision-making power on the Director rather than the Minister, as suggested by Endeavour, there is more than a passing resemblance between aspects of Endeavour’s proposal as discussed above and the considerably less than satisfactory legislation passed

on 20 November 2020 removing the requirement to satisfy the public interest and community impact assessment provisions of the *Liquor Act 2019* and conferring a discretionary power on a single public official, namely the Director of Liquor Licensing.

Best practice public policy involves treating like cases alike. The suggested amendments to the Government’s Bill submitted by Endeavour sought a new statutory regime for determining the Dan Murphy’s Darwin proposal that was different to the process for a typical substitution of premises application. As mentioned earlier, despite requiring the Minister as the proposed decision maker to consider the purpose of the Act, including the protection and enhancement of community amenity and wellbeing, Endeavour’s suggested amendments explicitly excluded any requirement to satisfy the public interest and community impact test. From the standpoint of a leading corporate citizen like Woolworths Group, that engagement and the suggested amendments may not have been in accordance with how it wishes to see itself or the reputation it aspires to cultivate.

8.4 The decision of the Director of Liquor Licensing

On 17 December 2020, the Director of Liquor Licensing approved Woolworths Group’s application as well as the other three historical applications of Liquorland Australia Pty Ltd, Pirlangimpi Community Club, and jointly Little Cashy Pty Ltd and Dunstall Pty Ltd. A number of aspects of the decision are concerning and problematic from a public policy perspective. In the Panel’s view, this is not a decision that a leading corporate citizen should rely on as the basis for a development such as the Darwin Dan Murphy’s development. The Panel believes that the issues discussed below include criticisms reasonably made about the Director’s decision. This is not to be confused with the 20 September 2019 decision of the Liquor Commission.

Background to the Director’s decision

In November 2020, Woolworths Group provided the Director of Liquor Licensing with further materials and submissions to support its substitution application.

As discussed earlier in this report, Woolworths Group identified an alternative site approximately one kilometre away from the old site and located on Osgood Drive opposite the intersection of McMillans Road and Sabine Road. It submitted letters from representatives of the Bagot community, Kulaluk and Minmarama Park communities, and Danila Dilba Health Service, addressed not to Woolworths Group or Endeavour but to Northern

²⁸⁷ Submissions in opposition of this Bill were received from Darwin-based service providers, alcohol research and advocacy groups and Hospitality NT

²⁸⁸ Legislative Assembly of Northern Territory Legislation Scrutiny Committee – Inquiry into the Liquor Amendment Bill 2020 [3.5]

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Territory Airports, which confirmed these groups did not object to the proposed store at the new address.

Although neutral on the alternative location of Dan Murphy's, Danila Dilba noted its ongoing reservations about the public health impacts of a new big box liquor outlet in Darwin, given the existing levels of alcohol-related harm in Darwin. The engagement with and views of the Bagot community and Danila Dilba Health Service are discussed in more detail in Chapter 9.4.

Woolworths Group confirmed its commitment to an engagement strategy with the three Aboriginal and Torres Strait Islander communities near the proposed store and other key stakeholders.

Woolworths Group submitted a further report by Professor Roberta Ryan, who had observed the proposed site and held discussions with stakeholders including the Northern Territory Police, Larrakia Nation, the Kulaluk and Minmarama Park communities and their representative body, Gwalwa Daraniki Association, Darwin Indigenous Men's Service, Darwin International Airport Corporation and various takeaway liquor retailers. In her report, Professor Ryan asserted that the key focus for considering the potential for risk of harm from the application should be on risky drinkers and the three Aboriginal and Torres Strait Islander communities nearest the site. Professor Ryan explained that good practice and adequate harm minimisation could be achieved through the operation of the store and Woolworths Group's Engagement Strategy and mitigation measures.

Woolworths Group again referred to its reputation as a market leader in the responsible service of alcohol. It explained that the Darwin Dan Murphy's would have the highest standards of responsible service of alcohol, both in the design of the premises and in the manner in which liquor was sold. This would include enhanced training and security, and the addition of a purpose-built 'spirits room' to segregate the sale of spirits, plans for which were developed after discussions with Northern Territory Police. It would also place a voluntary minimum sales price on beer, wine, fortified wine and glass spirits; commit to not selling cask wine or fortified wine in packages greater than 750ml; and not display the Dan Murphy's 'lowest liquor price guarantee' on the store exterior or in local advertising.²⁸⁹ Woolworths Group pointed to broader economic and consumer benefits that would flow from the proposed development.

The Foundation for Alcohol Research and Education (FARE) made additional submissions to the Director,

citing the five grounds on which it objected to the proposed development. FARE referred to the original decision of the Liquor Commission and the number of alcohol-related harms that would arise from the proposed store. It noted that these matters remained relevant to the new site and that moving the store one kilometre away was inconsequential. FARE noted the strong opposition to the new store location by prominent Aboriginal and Torres Strait Islander community organisations and leaders. FARE asserted that the new site would create additional harms, as it was closer to Rapid Creek (a known area for long grass campers) and close to entertainment venues used by children and young people, increasing exposure to alcohol and normalising alcohol use. Further, FARE claimed the mitigation measures proposed by Woolworths Group would not be effective in alleviating the alcohol-related harms identified by the Liquor Commission and opponents to the store. FARE also submitted expert reports from health experts and academics on the alcohol-related harms and social costs associated with the proposed development.²⁹⁰

Supporting good public policy

Good decision-making that has an element of consistency is a key component of good public policy. The Panel considers that components of the Director's decision are problematic from a public policy perspective, as discussed below.

The Director extensively referred to the previous decision of the Liquor Commission in 2019 to refuse Woolworths Group's application. It appears that the Director used the Liquor Commission's decision as a yardstick against which many aspects of Woolworths Group's application should be measured. The difficulty with that approach is that it did not seem to take into account that part of the legislation, as amended in November 2020, that provides that "any previous decision of the Commission... in relation to the applications is of no effect".²⁹¹ Interpreted literally, this would have required the Director to take a far more exhaustive approach than to merely refer to and rely on the evidence before the Commission, much of which he rejected or did not accept for his purposes in any event.

The approach adopted by the Director involved a starting point favourable to the Woolworths Group. The Director noted that the Woolworths Group had a "reasonable expectation"²⁹² of an approval if it addressed the previously identified deficiency in consultation with the local community and that a Dan Murphy's development

289 Decision of the Director of Liquor Licensing dated 17 December 2020, paragraphs [86]–[89]

290 Including statements from Dr Michael Livingston of La Trobe University, Professor Peter Miller of Deakin University, Professor Christopher N. Morrison of Columbia University, Professor Peter Phibbs of Sydney University, Dr Alison Ziller of Macquarie University and Professor James Smith of the Menzies School of Health Research

291 Section 334(3) of the *Liquor Act 2019* (NT)

292 Decision of the Director of Liquor Licensing dated 17 December 2020, paragraph [180]

somewhere in Darwin ought not be opposed if Woolworths Group could identify an appropriate site.²⁹³ In so doing, the Director relied on an observation of the Liquor Commission in its September 2019 decision. That approach was unsatisfactory and leads the Panel to question whether or not the Director asked himself the right questions in determining the application.

The Panel has considered whether the Director's decision addressed the public interest and community impact assessment requirements that would have been considered if the decision had been made by the Liquor Commission in the usual course. In that context, the Director's Decision Notice:

- does not set out the public interest objectives;²⁹⁴
- does not set out the community impact assessment considerations and therefore does not address whether the application would have a significant adverse impact on any of those matters;²⁹⁵ and
- does not address the terms of the community impact assessment guidelines and therefore does not then address the respects in which the application meets or departs from the guidelines.²⁹⁶

The Panel accepts that there are many ways to address relevant considerations. It need not involve explicitly referring to the law that applies to each consideration. However, the Director's decision did refer to sections of the Liquor Commission's previous 2019 decision that addressed the matters listed above.²⁹⁷ But the Director's reasoning to support the decision did not substantially address all of those matters. That deficiency means Woolworths Group's proposal to develop a Dan Murphy's in Darwin was approved without the key decision-maker, the Director, adequately or expressly considering and making findings about considerations that would otherwise apply to these types of applications. That is particularly important because the Director effectively rejected the Liquor Commission's findings concerning public interest and community impact.

The reasoning behind the Director's decision is problematic, in relation to his consideration and assessment of objections to the suitability of the proposed new location. The Director discusses community responses to the proposal, referring to submissions made by Helen Fejo-Frith (on behalf

of the Bagot community), Helen Secretary (on behalf of the Gwalwa Daraniki Association and the Kulaluk and Minmarama Park communities) and Olga Havnen (on behalf of Danila Dilba).

The Director found it "difficult to determine how much weight" should be given to Ms Fejo-Frith's statements, which he considered to be inconsistent.²⁹⁸ An option that was available to the Director was the relatively easy step of contacting Ms Fejo-Frith and asking for a statement that clearly indicated the attitude of the Bagot community to the proposed new location.²⁹⁹ The Director had already acknowledged that the concerns of the local Aboriginal communities around the original location were "highly persuasive and a major factor in the Liquor Commission's decision to refuse the application".³⁰⁰ Given that the Director noted the importance of that factor to the Liquor Commission, he must have thought that it was a significant factor in his own decision. Making an inquiry of Ms Fejo-Frith would have resulted in important and current information being made available to him.

The Director considered it significant that Ms Secretary and the Gwalwa Daraniki Association supported the proposed new location.³⁰¹ A letter of support³⁰² provided that the residents of the Kulaluk and Minmarama Park communities would like to see the Dan Murphy's development go ahead "irrespective of the location, because for the first time they might get something done about pedestrian safety along Bagot and other roads".³⁰³ The Director did not refer to the fact that Ms Secretary's support did not address most facets of the Dan Murphy's proposal, including the pros and cons of the new location. Rather that support seemed to have a single objective of improved pedestrian safety on local roads associated with development in and around the airport. This change in position, driven by pedestrian safety concerns, appeared to be a significant factor in the Director's decision to approve the new location. This was in spite of the fact that there was opposition from Danila Dilba, Ms Fejo-Frith and FARE, all of which the Liquor Commission found persuasive in its 2019 decision.

There was continued substantial opposition from local Aboriginal and Torres Strait Islander communities and health services. The main change was a letter of support from Gwalwa Daraniki Association focusing on general pedestrian safety, with no immediate

293 Decision of the Director of Liquor Licensing dated 17 December 2020, paragraph [184]

294 Listed in section 49(2) of the *Liquor Act 2019* (NT)

295 Provided in section 49(3) of the *Liquor Act 2019* (NT)

296 Referred to in sections 49(3)(i) and 50 of the *Liquor Act 2019* (NT)

297 Decision of the Director of Liquor Licensing dated 17 December 2020, paragraph [67]

298 Decision of the Director of Liquor Licensing dated 17 December 2020, paragraphs [192] and [255]

299 That power to gather information was available to the Director under section 334(4)(b) of the *Liquor Act 2019* (NT)

300 Decision of the Director of Liquor Licensing dated 17 December 2020, paragraph [178]

301 Decision of the Director of Liquor Licensing dated 17 December 2020, paragraphs [219] and [271]

302 A letter addressed "To whom it may concern" dated 25 September 2020, signed by Helen Secretary and Steve Doherty for Gwalwa Daraniki Association

303 Decision of the Director of Liquor Licensing dated 17 December 2020, Annexure B

8. REVIEW OF THE 2020 LEGISLATIVE CHANGES AND THE DECISION OF THE DIRECTOR OF LIQUOR LICENSING

connection to the suitability of the proposed new location of the Darwin Dan Murphy's development.

"We don't need the store. Why does Woolworths want to be part of everyone else that is destroying lives here? The amount of liquor outlets in Darwin is ridiculous."

- Bagot community member (3 March 2021)

It is not apparent how the Director took the FARE submissions and expert opinions into account in reaching his decision. However, there are significant issues raised by experts that Woolworths Group might benefit from exploring more broadly than the Director appeared to in the reasoning that led to his decision.³⁰⁴

"Given the fact that the Director is required to determine the application in an expedited manner, within 30 days, that process [of referring FARE's expert reports to Woolworths for a response] is not possible. Even if it were possible, in my view, it would not have been particularly helpful... given the inexact nature of the relevant studies and the contrary conclusions reached by the experts on both sides."

- Director of Liquor Licensing NT Decision Notice (17 December 2020)

A particular topic that the Director did engage with was in relation to the long grass campers in the surrounding areas of the proposed Dan Murphy's site. In this respect his decision was based on the Director's own previous experience³⁰⁵ and 'informal' advice from police,³⁰⁶ rather than by reference to any local community submission or expert opinion. The Director referred to the expert opinions in the context of addressing the density of liquor licences.³⁰⁷ The Director declined to engage with the details of the competing expert opinions in circumstances where the application had to be decided in an expedited timeframe.

The Director rejected submissions that there is strong community opposition. His suggestion that "the general tenor in the Greater Darwin community is that the opposite

is in fact the case"³⁰⁸ should be treated with caution by Woolworths Group. Notwithstanding that a majority of Darwin residents may support the Dan Murphy's proposal, this remains a live issue. It should be assessed and thoroughly tested by making sure that the communities which believe they will be impacted are listened to and heard. This assessment and testing should also occur with those health and service organisations representing and working with Aboriginal and Torres Strait Islander communities in Darwin and the Northern Territory.

Part of the Director's reasoning for his decision focused on Woolworths Group's proposed actions that went over and above the relevant legislative requirements.³⁰⁹ This included the proposed responsible service of alcohol mitigation measures. They provided a "significant level of comfort" that the approval of the substitution application would not result in the level of public drinking and anti-social behaviour that was of concern to the community at large. The Director also referred to the Woolworths Group's commitment to an engagement strategy with Aboriginal and Torres Strait Islander communities in the area and other stakeholders.³¹⁰

This emphasis on the positive actions proposed by Woolworths Group to minimise any negative impact from the new outlet are good and important. However, if the aspirations of Woolworths Group are to set a higher standard and be recognised as a leading corporate citizen, as it is in so many other aspects of its operations, the bar needs to be higher than just harm minimisation.

The question for Woolworths Group is whether it should proceed with the Darwin Dan Murphy's development in the face of strong and genuine community concern even if there is a legal decision to support its progress. Numerous stakeholders consulted by the Panel took the view that Woolworths Group must weigh the business objectives, permitted through a legal gateway, against a standard of community expectation that, certainly in these circumstances, sets a higher bar than the one set by the law. This observation is made by the Panel in the context of Woolworths Group's position as a leading corporate citizen with strong aspirations to support and help improve the communities in which it operates.

³⁰⁴ Decision of the Director of Liquor Licensing dated 17 December 2020, paragraph [229]

³⁰⁵ Decision of the Director of Liquor Licensing dated 17 December 2020, paragraphs [211]–[213]

³⁰⁶ Decision of the Director of Liquor Licensing dated 17 December 2020, paragraph [214]

³⁰⁷ Decision of the Director of Liquor Licensing dated 17 December 2020, paragraphs [220]–[231]

³⁰⁸ Decision of the Director of Liquor Licensing dated 17 December 2020, paragraph [272]

³⁰⁹ Decision of the Director of Liquor Licensing dated 17 December 2020, paragraphs [71] and [249]

³¹⁰ Decision of the Director of Liquor Licensing dated 17 December 2020, paragraphs [76], [90]–[91], [201]

8.5 Summary

Given Woolworths Group's very positive record in many parts of its operations and community investment, and its continued aspiration to improve the lives of customers and communities, the issues outlined above are important.

The Panel appreciates that in the course of doing business, organisations and government will work together for the benefit of both organisations and communities. However, that engagement cannot be at the expense of good public policy and decision making.

As outlined above, the Panel has material concerns about the 2020 legislative amendments to the liquor licensing laws. In particular the way in which they undermined or dispensed with important recommendations from the Riley Review. The Panel is also concerned about the quality of the Director's decision in December 2020. The Panel recommends that Woolworths Group carefully consider the issues outlined above before relying on the decision. The Panel also recommends that Woolworths Group commits to reviewing the way in which it engages with governments on future business plans and the outcomes which it should, or should not, rightly pursue.

“People will just drink more alcohol. This is a big stamp of approval. It says ‘this is us, this is a reflection of us.’ I am ashamed that we are seen as the booze capital. I know we can't stop this but I want to go on the record saying I am appalled this got the go ahead.”

- Charlie King OAM, Broadcaster and Founder of the NO MORE Campaign (11 March 2021)

9

Review of the Community Consultation Process

The consultation process as conceived and executed by Woolworths Group was primarily to secure the liquor licence approval. While the Endeavour personnel responsible for consultation may not accept this characterisation, the Panel nonetheless believes it to have been the overarching informant of the process. It is true that looked at as a whole over the 5 year period from 2016, Woolworths Group went over and above the strict regulatory requirements when undertaking consultation and responding to concerns regarding security and responsible service of alcohol issues. The Panel accepts that these efforts were genuine and sincere. Nonetheless the process fell short of what was required to genuinely engage with disadvantaged Aboriginal and Torres Strait Islander communities and the organisations which support them. In short, Woolworths Group failed to understand that, in the eyes of many Aboriginal and Torres Strait Islander peoples, it had no legitimacy to ask for any concessions or support in relation to the establishment of yet another facility for the sale of alcohol. The Panel's reference to the concept of legitimacy in this context is as discussed in Chapter 1. For many Aboriginal and Torres Strait Islander people, the Dan Murphy's proposal was nothing more than the pervasive and ongoing march of the dominant culture seeking to impose its will on them with little or no consideration of their unique position and circumstances.

9.1 Overview of the consultation process

Woolworths Group and Endeavour consulted stakeholders throughout the process to establish the Dan Murphy's Darwin development. Consultation took place in four phases:

- before the substitution of premises application submission to the Northern Territory Liquor Commission in July 2018;
- between the submission and the Northern Territory Liquor Commission's refusal of the application in September 2019;
- between the initial application refusal and the Northern Territory Director of Liquor Licensing's decision to approve the substitution of the liquor licence in December 2020; and
- after the approval of the liquor licence by the Director of Liquor Licensing on 17 December 2020.

This chapter explores the nature of the consultation conducted in each phase.

It is important to distinguish between the role of Woolworths Group and that of Endeavour in the consultation process. Woolworths Group was listed as the applicant on all liquor licence applications but had little direct role in the consultation process, which was designed by Endeavour with advice from an external law firm. The consultation process was undertaken almost exclusively by Endeavour employees. It was initially led by Endeavour's Business Development Manager responsible for new store openings, its General Manager for Corporate Services, and its Business Risk Manager. Endeavour's Head of External Affairs and Sustainability (a role distinct from Woolworths Group's Head of Sustainability) was involved in some consultation late in the process, following approval of the licence substitution application.

9.2 Pre-submission consultation (2016 to mid-2018)

As noted in the previous chapter, Woolworths Group did not undertake community consultation before external approvals were sought for the proposed Dan Murphy's Darwin development. In other words, by the time the consultation process had begun, the decision to develop a Dan Murphy's had been made, at least in principle. This may be an understandable commercial approach given the usual precautions taken by corporations to maintain confidentiality and to protect competitive economic advantages when pursuing new opportunities. However, in its discussions with a number of stakeholders, the

Panel was left in no doubt that, to many Aboriginal and Torres Strait Islander opponents of the Dan Murphy's proposal, the consultation process seemed to be perfunctory and a waste of time.

In interviews with the Panel, Endeavour personnel expressed awareness that Darwin presented particularly sensitive community dynamics which would require the company to go above and beyond its usual community consultation processes for a Dan Murphy's. And this it did. Nonetheless, despite that awareness, criticism can still be made over the failure of Endeavour to engage with the Aboriginal and Torres Strait Islander community or ask any of its leaders to advise and guide it in the development of a process that might have been acceptable to Aboriginal and Torres Strait Islander communities.

Early consultation to inform the public interest and community impact consideration

"There should be open[ness], transparency and shared decision-making, with local leadership fully engaged from the get-go."

- June Oscar AO, Aboriginal and Torres Strait Islander Commissioner, Australian Human Rights Commission (23 February 2021)

The first meeting about the proposed Dan Murphy's Darwin development between Woolworths Group, Endeavour and Licensing NT took place on 31 May 2016. Later in October 2016, Endeavour received advice from an external law firm about the preparatory steps required for its application to secure the licence for the Darwin Dan Murphy's development. As part of its licence application, Woolworths Group had the onus to satisfy the Liquor Commission that the approval of the application met the public interest and community impact test. In the materials provided to the Liquor Commission, Woolworths Group included a public interest assessment. This was accompanied by a town planners' report prepared by MGA Town Planners, and a projection of sales volume for the local marketplace by an independent economics consultancy. Neither of these organisations are based in the Northern Territory, though both had worked with Endeavour on previous proposals in Western Australia and elsewhere.

In November 2016, Woolworths Group and Endeavour commissioned a phone survey, which polled the consumer sentiment of 400 residents within a 5-kilometre radius of the proposed store. The survey found that 69 per cent of respondents thought opening a Dan Murphy's was a good idea, with 22 per cent

considering it a bad idea and 10 per cent undecided.³¹¹ Among those who thought the store was a bad idea, the main reasons cited were “social problems/encourages excessive drinking” or “enough [liquor stores] here already”. Further, when asked if there was a need for a large-scale liquor store in the Northern Territory, 61 per cent agreed, while 40 per cent disagreed.³¹²

This phone survey was the only community consultation included as part of Woolworths Group’s public interest assessment, which was submitted to the Liquor Commission as part of its licence application. However, it does not appear that the negative sentiment picked up in the survey was given significant weight in the application process. Indeed, reports provided to the Woolworths Group Board about the proposed Dan Murphy’s development focussed on the strong community support for the proposal, with little discussion of the opponents’ views or their underlying rationales.

To optimise prospects of a successful application and to demonstrate its sensitivity to the community dynamics of Darwin, Endeavour undertook a broader approach to consultation, which included identification of an appropriate and larger community area. Such an approach would also have been considered as a further demonstration of Woolworths Group meeting the “fit and proper person” test as required under the *Liquor Act 1978*.³¹³

On 30 April 2018, the external law firm acting for Endeavour contacted Licensing NT to discuss the size of this community area for the application, and on 15 May 2018 it was agreed to be that area within a 25-kilometre radius of the proposed site. On 26 May 2018, a meeting was held with Licensing NT to confirm the process for a licence application, including the conditions of a period of public comment. Endeavour divided the community area into different radiuses, in which community facilities, community buildings and at risk groups would be contacted to varying degrees, depending on their proximity to and the likely impact of the proposed development on certain groups (see Exhibit 25). While it identified over 150 stakeholders between 5 kilometres and 25 kilometres from the site as part of the MGA Town Planners report attached to the initial application, it did not proactively engage all identified organisations to gauge their level of interest or any concerns with the licence application.³¹⁴

A pertinent example is Yilli Housing, which provides housing management, maintenance and municipal services to the Bagot community and fourteen other community housing sites in surrounding areas. Despite playing an important role in Greater Darwin communities and being located within the main trade area, no attempt was made to contact Yilli Housing until 2020. The CEO of Yilli Housing later signed an open letter from FARE to the Woolworths Group Chair.³¹⁵

“Woolworths need some good cultural brokers. They need people to tell them about how to go about doing things. You need people to tell you what the culturally appropriate things are. This isn’t appreciated by corporations who aren’t aware of the parallel and governance structures within a community. It’s a different operating system in terms of authority. For example, in one Aboriginal community, the cleaner was the most powerful authority to consult. Often, Westerners don’t understand these governance structures.”

- Damien Howard, Psychologist and Cross-Cultural Mentor, Phoenix Consulting (10 March 2021)

311 Note figures do not add due to rounding

312 Note figures do not add due to rounding

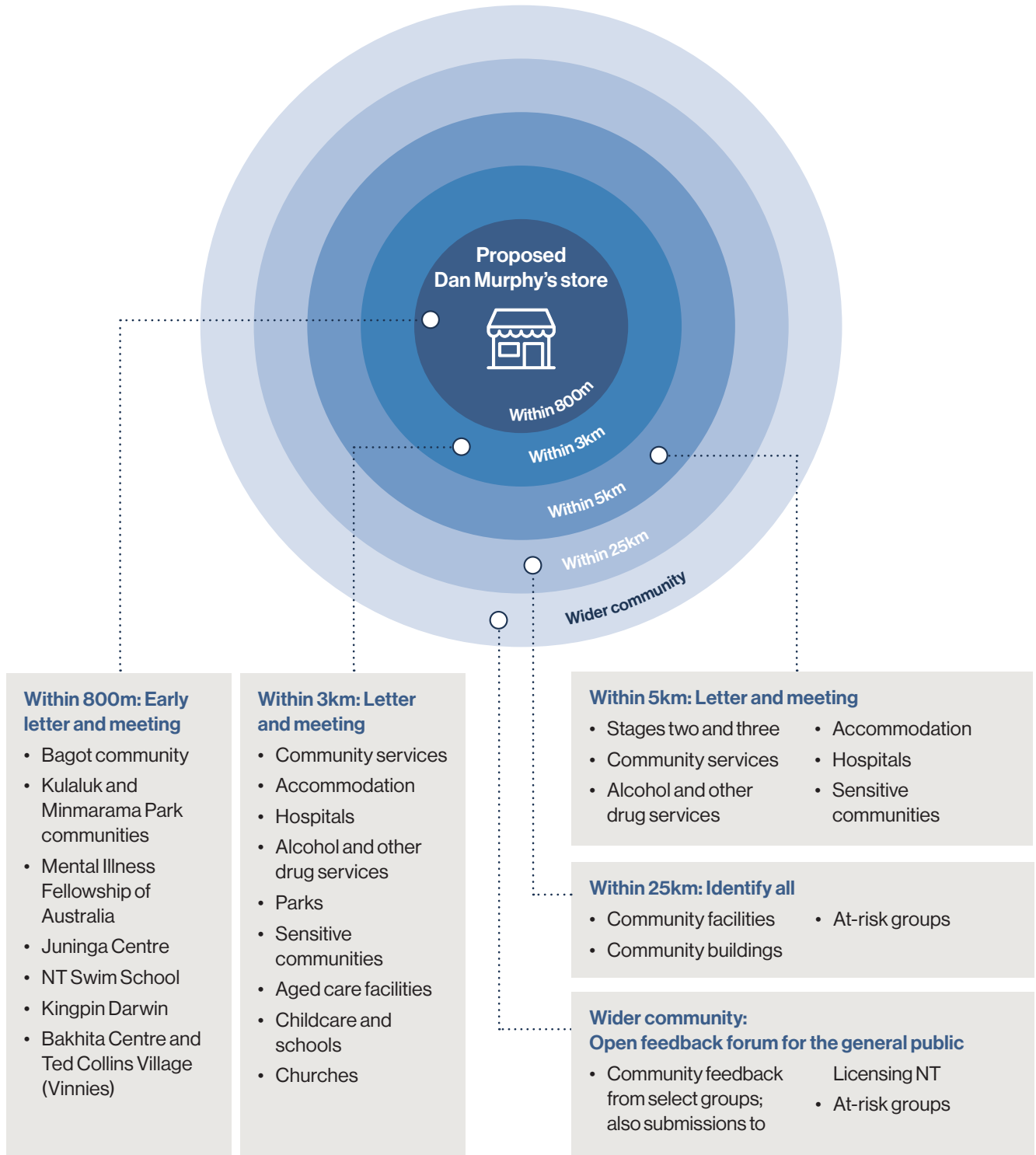
313 Section 28(2)(e) of the *Liquor Act 1978* (NT)

314 Note this included a list of community buildings identified within a 25-kilometre radius, but specified only 85 facilities within a 5-kilometre radius would be contacted.

315 FARE (2020), ‘Open letter to the Chair of Woolworths’

Exhibit 25:

Endeavour Group's consultation strategy



Source: The above has been constructed from information taken from the Endeavour RSA Report, featured in evidence submitted by Woolworths Group to the Liquor Commission in 2019




The consultation plan was developed and implemented concurrently with the licence application (and after the public impact assessment was drafted). This meant that findings from the consultation, including recommendations around responsible service practices, were submitted to the Liquor Commission by Woolworths Group in support of its application. The point to be made here is that the consultation plan should have been developed prior to the commencement of any consultation process.

Endeavour notified local authorities before the application submission date, over and above the strict requirements of the *Liquor Act 1978*, which required

the Director-General of Licensing to inform the CEO of the Department of Health, the Commissioner of Police and the CEO of the local council (in this case, the City of Darwin) of the application.³¹⁶ These bodies were invited to give feedback on licence applications, and were able to lodge a formal objection to the Liquor Commission.³¹⁷ This enabled Endeavour to proactively address requirements with appropriate early consultation. Its representatives first contacted the City of Darwin in June 2018, receiving advice about the correct contact person at Northern Territory Police. They met personnel from these organisations after the application was lodged on 19 July 2018.³¹⁸

Exhibit 26:

Requirements under the Northern Territory *Liquor Act 1978*

	 <p>Advise regulators and other authorities</p>	 <p>Display notice and respond to objectors</p>	 <p>Assess community impact</p>
Liquor Act 1978 (NT)	46A(2)-(4)	46A(2)-(3), 47F and 47G	6(1), 6B
What is a licence applicant required to do?	Applicant must publish the notice of the application in the way specified by the Director-General of Licensing.	Applicant must publish the notice of the application in the way specified by the Director-General of Licensing. Applicant given opportunity to respond to objections.	The applicant must satisfy the Liquor Commission that the approval of the application meets the public interest and community impact test.
What are other parties required to do?	Director-General of Licensing must inform the CEO of the Department of Health, the Commissioner of Police and the CEO of the council (if relevant) that the application has been made.	Objectors have 30-day period to submit objections. The Director-General of Licensing must, within 5 days of the expiry of the submission period, inform the applicant and give them an opportunity to provide a written reply to the objection.	The decision maker (e.g. Liquor Commission) must apply the public interest and community impact test when considering or determining an application under this Act.

Source: *Liquor Act 1978*

316 Decision of the Northern Territory Liquor Commission dated 20 September 2019, paragraph [25]

317 Sections 46A(4) and 47F of the *Liquor Act 1978* (NT)

318 Decision of the Northern Territory Liquor Commission dated 20 September 2019, paragraph [3]

“Nationally, it needs to focus on cultural safety. It’s a fundamental thing that underpins recruitment and retention of Aboriginal and Torres Strait Islander people... cultural safety is about non-Indigenous people changing how they practice and interact with Aboriginal and Torres Strait Islander people.”

- Paul Gibson, Director of Policy and Research, Indigenous Allied Health Association (2 March 2021)

It is important to note that despite Woolworths Group’s long-running presence and extensive footprint in the Northern Territory, the Panel felt that at the beginning of the consultation process the company demonstrated a somewhat shallow level of understanding of the unique context of the proposed development, including how to identify and appropriately engage with local Aboriginal and Torres Strait Islander communities. The effect of this lack of knowledge meant that the consultation process was not planned and conducted in a ‘culturally safe’ manner, which was vitally important to earn the trust and ensure the engagement not only of Aboriginal and Torres Strait Islander communities near the store but in and around Darwin more broadly. Critically, in the views of numerous stakeholders consulted by the Panel, there was a strong view that Endeavour had not made sufficient efforts to truly consider the views of Aboriginal and Torres Strait Islander peoples and that consultation was designed only to facilitate their approval of or consent to the desired commercial outcome.

Although not expressed precisely in these terms by many of the Aboriginal and Torres Strait Islander people whom the Panel consulted, the following is nonetheless a reasonable and accurate summation of how they see it.

Cultural safety

Cultural safety is about creating an environment that is safe for Aboriginal and Torres Strait Islander peoples. This means there is no assault, challenge or denial of their identity or experience. It includes:

- **Shared respect, shared meaning and shared knowledge**
- The experience of **learning together with dignity and truly listening**
- Strategic and institutional reform to remove barriers to the optimal health, wellbeing and safety of Aboriginal people. This includes **addressing unconscious bias, racism and discrimination**, and supporting Aboriginal **self-determination**
- **Individuals, organisations and systems ensuring their cultural values do not negatively impact on Aboriginal peoples**, including addressing the potential for unconscious bias, racism and discrimination
- Individuals, organisations and systems **ensuring self-determination for Aboriginal people**. This includes **sharing power** (decision-making and governance) and resources with Aboriginal and Torres Strait Islander communities. It’s especially relevant for the design, delivery and evaluation of services for Aboriginal people.

Source: Department of Health & Human Services, State Government of Victoria, Aboriginal and Torres Strait Islander cultural safety

9.3 Post-submission consultation (mid-2018 to late 2019)

Initial post-submission engagement

On 19 July 2018, Endeavour lodged the application to substitute the premises on the liquor licence for the BWS Stuart Park store with a Dan Murphy's development on the corner of Bagot Road and Osgood Drive. This marked the beginning of Endeavour's community consultations about the proposed development. On 24 July, it began sending letters to community organisations within 800 metres of the proposed site, and on 26 July to affected organisations within a 5 kilometre radius (identified in Exhibit 25). Endeavour's records note that 81 letters were sent. Endeavour also established a website to promote the proposed Dan Murphy's Darwin development concept and solicit community feedback. The feedback form was also sent to residents already on the Dan Murphy's mailing list, and targeted advertisements were placed online.

"If you are going to have a consultation with a community, it should be consultation with all groups ... 'cherry picking people' and influencing people isn't consultation."

- Monica Barolits-McCabe, CEO, Australian Indigenous Doctors Association (9 March 2021)

The letters from Endeavour were the first attempted point of contact with the communities closest to the proposed Dan Murphy's Darwin development: the Bagot community and the Gwalwa Daraniki Association (representing the Kulaluk and Minmarama Park communities). Importantly, the letters were sent to the two communities via the Chair of the Danila Dilba Health Service (Carol Stanislaus), despite Danila Dilba not having any formal representative role on behalf of the communities. Both communities had their own representatives and addresses, but neither Endeavour nor its representatives attempted to contact the communities independently to establish their correct contact details. From the Bagot community's perspective, sending a generic letter to initiate a conversation, which was not appropriately addressed to a representative of the community, was seen as cursory and culturally inappropriate, and set a negative tone that tainted all future engagement with Endeavour and Woolworths Group. Indeed, Endeavour personnel said to the Panel that they regretted relying on letters to start the conversation with the Aboriginal and Torres Strait

Islander communities, and should have called community representatives or visited them directly.

Separately, as part of efforts to meet with the authorities who would need to be notified in accordance with the Liquor Act, Endeavour's Business Risk Manager met with Northern Territory Police in the week of 23 July 2018 to discuss risk management strategies for the proposed store. Their conversation covered team member training and support, the product range and display, store design and the external environment. A report on recommendations from this meeting became the bases for additional measures to ensure the responsible service of alcohol at the store and its immediate surrounds, which Endeavour committed to and included in the licence substitution application.

Woolworths Group was required to publish details of its application within 28 days of lodgement. Advertisements were placed in the NT News on 1 and 4 August 2018, and signage provided by Licensing NT was displayed at the premises from 4 August to 3 September.³¹⁹ Objections and other responses received by Licensing NT were provided to Woolworths Group for reply to the Liquor Commission for consideration in its decision-making process. As well as the mandatory advertisements, Endeavour placed additional advertisements in print and social media in early August 2018. These advertisements linked to the Dan Murphy's Darwin promotional website, which was live from late July until late August 2018. The website link was emailed to nearly 1,000 Dan Murphy's customers living in the Northern Territory. By the end of August, Endeavour had received 204 responses, 96 per cent of which were positive about the proposed Dan Murphy's opening in Darwin. The majority of feedback focused on the benefits of an increased range of beers, wines and spirits that would be available as well as the increased competition and lower prices. One respondent said, "I am pleased that Dan Murphy's is finally coming to Darwin and I look forward to shopping there. DM's represents better range and pricing".

"The vast majority of the population do like the value, range, choice and price that would be offered by a Dan Murphy's."

- Senator Dr Sam McMahan, Senator for the Northern Territory (10 March 2021)

319 Decision of the Northern Territory Liquor Commission dated 20 September 2019, paragraph [21]

In-person engagement post-submission

After the public notice and initial tranche of letters to community groups, Endeavour's Business Development Manager scheduled in-person consultations in Darwin for 20–23 August 2018. Key letter recipients who had not replied to the letters were contacted again. By 16 August 2018, Endeavour had not confirmed a time to meet with Danila Dilba Health Service. An Endeavour representative followed up by phone, but the call was not answered. On 21 August 2018, a representative from Danila Dilba called and asked that Endeavour send no further letters, as the health service was "not interested in talking to an alcohol company". As Danila Dilba had lodged an objection to the licence transfer application, Woolworths Group would have received this objection with its application by 9 September 2018 and had an opportunity to reply. However, the August phone call is the last record of communication until the Liquor Commission hearing. Following this exchange, there was an effective pause in communications between Endeavour and Danila Dilba from August 2018.

In that time, Endeavour did not proactively engage the Bagot, Kulaluk or Minmarama Park communities directly. Endeavour did not appear to consider alternative ways to engage these communities, such as contacting other Aboriginal and Torres Strait Islander leaders or engaging an Aboriginal and Torres Strait Islander consultation expert to facilitate communication. There was also no evident consideration of whether the chosen methods of soliciting feedback (that is, via polling, emails and websites) would provide an appropriate means to gauge sentiment of the Aboriginal and Torres Strait Islander communities near the proposed store or further afield, which may have required more comprehensive, culturally sensitive and nuanced approaches. Endeavour's approach in effect compromised the legitimacy of the consultation process as seen from the perspective of key Aboriginal and Torres Strait Islander stakeholders.

Feedback following initial in-person consultation

Endeavour's Business Development Manager held in-person meetings with six groups during the August 2018 visit to Darwin: Licensing NT, the Juninga Aged Care Centre, Northern Territory Police, Amity Community Services, the Larrakia Nation Aboriginal Corporation and CatholicCare NT.³²⁰ NT Swim School and Mission Australia were contacted by phone. These groups all fell within the 800-metre radius of the proposed site. As noted above, meetings were not held during this period with the Aboriginal and Torres Strait Islander communities directly adjacent to the proposed site or the Danila Dilba Health Service.

Five overarching concerns were raised during these consultations:

- **Store security:** police and other stakeholders raised concerns about the possibility of break-ins, including the possible use of vehicles to ram the premises, and rough sleepers being attracted to the grass on or adjacent to the site.
- **Responsible service of alcohol:** most social service and law enforcement stakeholders expressed concerns related to the secondary supply of alcohol to banned drinkers and 'grog running' to dry communities.
- **Traffic and pedestrian safety:** nearly all stakeholders expressed concerns about the traffic controls on Bagot Road, where insufficient lighting, crossing and fencing have seen multiple pedestrians (often intoxicated) involved in fatal crashes when crossing the street.
- **Alcohol-related harm:** most social services organisations were concerned about the effect Dan Murphy's would have on the price and availability of alcohol, and projected that the store would lead to increases in the consumption of alcohol and the incidence of alcohol-related harm.
- **Woolworths Group's and Endeavour's conduct in the Darwin market:** some groups expressed concerns about the operation of particular BWS stores and raised a broader issue about Woolworths Group's cultural sensitivity in undertaking this application.

It is important to note Larrakia Nation Aboriginal Corporation's (Larrakia Nation's) role in the consultation process. The Larrakia are the Traditional Owners of the Greater Darwin region, and Larrakia Nation is a major Aboriginal and Torres Strait Islander service delivery and business development organisation, representing eight of the nine Larrakia families. Larrakia Nation operates day and night patrols that work with alcohol-affected people to ensure their safety, including responding to violent situations in the short-term and through return-to-community efforts and outreach in the longer-term. Endeavour first met with Larrakia Nation representatives on 22 August 2018. During these initial consultations, Larrakia Nation expressed concerns to Endeavour about pedestrian safety, as inebriated pedestrians were most likely to walk in a straight line from one point to another across Bagot Road.

Amity Community Services opposed the store. Its representatives were sceptical that the store was a like-for-like transfer with the BWS Stuart Park licence. CatholicCare NT and Juninga Aged Care representatives had no formal objections, although those organisations made suggestions regarding harm mitigation measures

320 Note: Endeavour met with the local CatholicCare NT Regional Manager, rather than the Director or members of the executive

that could be implemented for the proposed store. The CatholicCare NT representative suggested a returns policy for bulk alcohol purchases. The outcomes of discussions with Mission Australia and the NT Swim School are not clear from Endeavour’s records.

Formal objections to the application

Following these in-person consultations, the City of Darwin discussed the application in its bi-monthly meetings, and Endeavour received the responses and objections submitted to the Director-General of Licensing.

As part of the liquor licensing process, Licensing NT informs the City of Darwin about liquor licence applications in its jurisdiction and provides the Council with the opportunity to respond. On 28 August 2018, the Council carried a motion to request the community impact statement for the application.³²¹ In response, Endeavour confidentially provided the Council with the public interest assessment attached to its application. At its 14 September 2018 meeting, the Council carried a motion that it had no grounds for objecting to the application and requesting that all risk management strategies detailed in the public interest analysis be adopted.³²² Alderman Simon Niblock requested his objection be noted on the record. Endeavour does not appear to have contacted this local representative to hear or address his concerns.³²³

On 3 September 2018, submissions to Licensing NT on the application closed.³²⁴ Objections were received from 17 stakeholders, including 10 peak bodies and community organisations, some of which are listed below.³²⁵

- **Danila Dilba Health Service** objected to the application on the grounds that it would increase the quantities of alcohol supplied and consumed – in particular that consumed by at-risk clients of the health service. It was also concerned about alcohol-related harms and community impacts.³²⁶
- A group of **public health and social service organisations** comprising NTCOSS, the Association of Alcohol and Other Drug Agencies NT, AMSANT, Public Health Association of Australia – Northern Territory branch and FARE objected due to concerns about the legality of the licence transfer, given that

BWS Stuart Park was not in operation at the time.³²⁷

- **Amity Community Services Incorporated** was concerned about alcohol-related harms and community impacts, from the perspective of an organisation that provides services to people affected by alcohol abuse.³²⁸
- **Bagot community** was concerned that a Dan Murphy’s development would intensify the abuse of alcohol within the community, affecting the incidences of violence, domestic violence and child neglect. The Bagot community also held fears regarding traffic and pedestrian safety, noting that many community members would not use traffic lights.³²⁹
- **Gwalwa Daraniki Association** was concerned that a Dan Murphy’s development would increase the alcohol-related problems of domestic violence and anti-social behaviour, as well as secondary supply and the incidence of traffic-related accidents on Bagot Road.³³⁰
- **Australian Hotels Association (NT Branch)** was concerned about the low cost of some products at Dan Murphy’s, including through discounts, which may have the effect of lowering prices across the industry.³³¹

All of these organisations, and others including local councillors, Aboriginal and Torres Strait Islander communities, medical services and peak bodies, lodged objections to the application with Licensing NT.³³² The objections were forwarded to Woolworths Group on 5 September 2018.³³³ Endeavour’s record of consultations does not indicate whether it replied to or followed up on any of the objections or responses before the hearings, with the exception of Amity Community Services Incorporated as already indicated.

Around this time, Endeavour continued to consult with law enforcement stakeholders to address responsible service and store safety concerns. On 11 September 2018, its representatives met with the Australian Federal Police and the Joint Emergency Services communications centre, including the Northern Territory Police CCTV Administrator. The discussions covered proposed physical security measures and CCTV standards, and how the store would fit into the operations of local police and community service stakeholders. Northern Territory Police was concerned about traffic management,

321 City of Darwin, ‘2nd Ordinary Council Meeting – 28 August 2018 Confirmed Minutes’, p. 8

322 City of Darwin, ‘Ordinary Council Meeting – 11 September 2018 Confirmed Minutes’, p. 10

323 Will Zwar, NT News, ‘Council gives conditional support to Darwin Dan Murphy’s’, 11 September 2018

324 Decision of the Northern Territory Liquor Commission dated 20 September 2019, paragraph [8]

325 Decision of the Northern Territory Liquor Commission dated 20 September 2019, paragraphs [8] and [22]

326 Decision of the Northern Territory Liquor Commission dated 20 September 2019, paragraph [102]

327 Decision of the Northern Territory Liquor Commission dated 20 September 2019, paragraph [128]

328 Decision of the Northern Territory Liquor Commission dated 20 September 2019, paragraph [110]

329 Decision of the Northern Territory Liquor Commission dated 20 September 2019, paragraphs [163]–[168]

330 Decision of the Northern Territory Liquor Commission dated 20 September 2019, paragraphs [170]–[175]

331 Decision of the Northern Territory Liquor Commission dated 20 September 2019, paragraph [254]

332 Decision of the Northern Territory Liquor Commission dated 20 September 2019, paragraph [22]

333 Decision of the Northern Territory Liquor Commission dated 20 September 2019, paragraph [8]

including carpark capacity (especially during peak seasons) and pedestrian safety. The Northern Territory Police also reiterated its recommendation that the proposed store use police auxiliary liquor inspectors and a Smart Pole surveillance system.

Responses to stakeholder concerns

The objectors raised five key concerns regarding the proposed development. The objections focused on store security; the responsible service of alcohol; traffic and pedestrian safety; alcohol-related harm; and the conduct of Woolworths Group and Endeavour in the Darwin market. In the evidence to the Liquor Commission to support its application, Woolworths Group and Endeavour responded to concerns in relation to store security and the responsible service of alcohol by proposing risk minimisation measures to be implemented at the point of sale and in the store's immediate surrounds.

Store security

During the Liquor Commission hearing, Endeavour's General Manager submitted a Responsible Service of Alcohol Review in support of Woolworths Group's licence application in October 2018. It outlined a number of mitigants and initiatives which were proposed to address security concerns raised during the consultation process, which included:

- high-definition CCTV cameras with facial recognition inside the store;
- CCTV in external areas surrounding the store;
- store design using CPTED principles;
- security personnel and police auxiliary liquor inspectors engaged on-site during trading hours; and
- random security patrol vehicles monitoring premises and surrounds.

Responsible service of alcohol

Endeavour's Responsible Service of Alcohol Review proposed controls relating to the responsible service of alcohol, and included:

- controls for liquor purchases over set threshold quantities, for example, by recording customer identification;
- partnering with local Liquor Accords;
- full legislative compliance, including the implementation of minimum unit prices;
- pre-fitting the counter for cabling required to check IDs on the Banned Drinker Register;

- requiring staff members to have RSA certification and regular refresher training, as well as specific Banned Drinker Register and cultural awareness training; and
- responsible marketing, in line with community standards (for example, Liquor Accords) and the Alcohol Beverages Advertising Code scheme.

“Young people are vulnerable to alcohol products and the alcohol industry uses covert marketing to do that. From my research with young people and advertising, the alcohol brands and industries are trying to represent alcohol as being fun, relaxing, [and] increasing romantic and other successes.”

- Dr Cassandra Wright, NHMRC Early Career Research Fellow, Menzies School of Health Research (4 March 2021)

Traffic and pedestrian safety

Woolworths Group and Endeavour responded to traffic concerns raised during the consultation process by referring to traffic and pedestrian safety upgrades proposed by Northern Territory Airports as part of the Darwin Airport Central development. Elements of the proposed traffic and pedestrian safety upgrades included:

- a right-turn from Bagot Road;
- lighting along Bagot Road;
- footpaths on the east side of Bagot Road to access Bunnings and Dan Murphy's sites;
- a signalised pedestrian crossing with lights; and
- a pedestrian fence to the west of the proposed Dan Murphy's site.

These traffic improvements were a clear response to the feedback from the community consultation process.

Alcohol-related harm

One of the persistent concerns raised by objectors was the level of alcohol-related harm that a Dan Murphy's development might bring to the community. To address this, and as part of the licence application, Woolworths Group and Endeavour sought to establish whether there would be an increase in alcohol-related harm as a result of the proposed store. To form this view, Endeavour engaged social planning expert Professor Roberta Ryan. Professor Ryan considered the community context, the connections between the supply of alcohol and risk of harm and the features of the proposed store, including the harm mitigation methods which would be put in place. Professor Ryan found that the projected increase in sales was unlikely to result in additional harm to either

the at-risk First Nations communities or the community more generally if certain restrictions, controls and pricing measures were implemented.³³⁴

“There are three factors that impact on alcohol consumption: One, price; two, total trading hours; and three, the density of trading outlets – price being the biggest single factor.”

-Dr John Boffa, Chief Medical Officer Public Health, Central Australian Aboriginal Congress (10 March 2021)

Dan Murphy’s sales forecasts

As part of its evidence to the Liquor Commission, Woolworths Group provided sales forecasts that modelled projected sales for a new store. The evidence suggested that the total market size for liquor sales was \$245 million.³³⁵

It was also made clear to the Liquor Commission that through its existing BWS stores and taverns, Woolworths Group was the largest supplier of liquor in Darwin. The BWS Darwin stores alone purchased 40.41 per cent of all wholesale liquor supplied from Northern Territory wholesalers in 2017, and 38.24 per cent in 2018. The projected volume of sales of the proposed original site for the Dan Murphy’s Darwin development was estimated to be 80 per cent of the 2019 volume of sales within a 5-kilometre radius of the site, and 25 per cent of all liquor sales within the main trade area.

However, these sales figures have been a source of contest. On one hand, evidence provided by Mr Gavin Duane, economist, suggested that the proposed Darwin Dan Murphy’s would principally source its revenue by cannibalising existing turnover from other outlets.³³⁶ Accordingly, it would not materially increase the volume of alcohol sold through the community. This was at odds with what many community organisations expected or intuited from the Dan Murphy’s marketing and business model. They believed that a high-volume, low-cost business with a lowest price guarantee would increase the overall volume of liquor sales in the market, and would therefore lead to an increase in consumption of alcohol.³³⁷

The Panel raised this issue with Professor Ryan who said she was aware of this view and although she did not necessarily agree with it, “the proof of the pudding will be in the eating”.

Woolworths Group challenged these claims during the Liquor Commission hearing for three reasons. First, the consumption of alcohol per capita across Australia has been declining since the mid-2000s, despite an increase in the number of packaged liquor stores and the growing prevalence of large-format stores such as Dan Murphy’s and First Choice Liquor. Customers are also spending more per category, but buying lower volumes of alcohol.³³⁸ As noted elsewhere in this report, the correlation between the size or density of liquor stores and increases in alcohol-related harms is contested.

The Panel sought further data from Woolworths Group to test these claims. However, it has not been able to independently verify either Woolworths Group’s model or the claims presented by community groups. It is therefore unable to objectively judge whether a Dan Murphy’s would increase the overall level of sales or the volume of liquor consumed in Darwin.

It is important to note, Endeavour’s view that Dan Murphy’s has a lower proportion of sales of cheap alcohol (such as pre-mixed or ‘ready-to-drink’ spirits, cheaper bottled wines and cask wines) relative to its competitors, and relies on sales of premium products to generate a significant proportion of its profit.

334 Note: Professor Ryan’s report acknowledged that it was difficult to express a definitive view about the risk of harm to the First Nations communities without knowing what issues there were regarding alcohol within these communities and, if there were issues, where alcohol was being sourced from

335 Decision of the Northern Territory Liquor Commission dated 20 September 2019, paragraph [225]

336 Decision of the Northern Territory Liquor Commission dated 20 September 2019, paragraph [70]

337 Decision of the Northern Territory Liquor Commission dated 20 September 2019, paragraphs [217]–[233]

338 Decision of the Northern Territory Liquor Commission dated 20 September 2019, paragraphs [234]

The conduct of Woolworths Group and Endeavour in the Darwin market

In its closing submission to the Liquor Commission hearing, Woolworths Group committed to respond to the feedback received from the Liquor Commission irrespective of the outcome of the application. This included:

- Woolworths Group following up on anecdotal evidence regarding secondary supply issues at BWS Nightcliff with training, instruction, additional security and by working with Northern Territory Police; and
- creating an Aboriginal and Torres Strait Islander liaison role to improve relationships between First Nations communities, health organisations and Endeavour. It committed to commence hiring for this role within 60 days. As of mid-April 2021, this role had not been established by Endeavour.³³⁹

Endeavour did not consult the Woolworths Group External Indigenous Advisory Panel as to these responses and how Woolworths Group might proceed to answer them.

9.4 Post-Liquor Commission decision consultation (late 2019 to late 2020)

Liquor Commission decision summary

On 20 September 2019, the Liquor Commission refused Woolworths Group's application for the licence substitution and variation to licence conditions. In its decision, the Liquor Commission remarked that it was unfortunate that Woolworths Group had not engaged in consulting the local community prior to committing to the site, as it would (in the Liquor Commission's view) have come to the realisation the site was not an appropriate position for any liquor store, let alone a store the size of Dan Murphy's.³⁴⁰ A more extensive discussion of the hearing before the Liquor Commission is in Chapter 7.

This marked a turning point for the consultations with Woolworths Group seeking to develop a more comprehensive engagement strategy. This would see meetings organised with the Northern Territory Government, Larrakia Nation, Northern Territory Police, the Department of Infrastructure, Planning and Logistics and, notably, the Gwalwa Daraniki Association. To assist in developing the engagement strategy, Professor Ryan was once again engaged. These stakeholders were

followed up throughout the year, through to the eventual decision made by the Director of Liquor Licensing in December 2020.

However, this consultation did not include regular or substantive discussions with other key stakeholders identified in the Liquor Commission decision, particularly the Bagot community, Danila Dilba Health Service, AMSANT and NTCOSS.

Consultations with key stakeholders (late 2019)

Following the Liquor Commission's refusal of Woolworths Group's licence application, Endeavour met with the Northern Territory Government. The Chief Minister subsequently provided Endeavour with a letter of support for the Dan Murphy's development, and issued a media release in support on 20 September 2019.³⁴¹ The application for review by NTCAT regarding the Liquor Commission's decision was formally lodged on 18 October 2019, shortly after these discussions.

Engagement with Larrakia Nation Aboriginal Corporation

Endeavour, alongside Northern Territory Airports, also engaged Larrakia Nation during this period. The first discussion was relatively general, with Larrakia Nation detailing its current agenda. This included the provision of safe locations for long-grass communities, and a focus on healthy living to address life expectancy concerns. It also involved a discussion of a Larrakia Nation app that allows individuals to report anti-social behaviour. In expanding this app to include health service contact details and other proactive services, Northern Territory Airports offered development support. However, no comments were made with reference to the Dan Murphy's development. It is important to note that Larrakia Nation's official position on the proposed Dan Murphy's Darwin development was to remain neutral and avoid taking any public position on the proposed development. That official neutral position was confirmed to the Panel in its consultation with Larrakia Nation. It was clear to the Panel that Larrakia Nation wished to avoid getting involved with the politics surrounding the Dan Murphy's Darwin development. A member of the Larrakia Nation Board who consulted with the panel in his own personal capacity, not as a director of Larrakia Nation, expressed his opposition to the development.

³³⁹ At no point in the Panel consultation process or independent research was this commitment in Endeavour Group's closing submissions confirmed as having been completed.

³⁴⁰ Decision of the Northern Territory Liquor Commission dated 20 September 2019, paragraph [358]

³⁴¹ Chief Minister of the Northern Territory (2019), 'Statement of Liquor Commission's Dan Murphy's Decision', accessed 2 March 2021

Engagement with the Gwalwa Daraniki Association

On 25 October 2019, Endeavour – alongside Northern Territory Airports – engaged with Helen Secretary and Steve Doherty from the Gwalwa Daraniki Association. This was the first point of direct contact between the Gwalwa Daraniki Association and Endeavour. The discussion primarily focused on how Ms Secretary came to be involved in the Northern Territory Liquor Commission hearing as an objector, and the main concerns regarding the communities that the Gwalwa Daraniki Association represent.

The Liquor Commission hearing

Ms Secretary was originally approached by lawyers whom she believed represented community groups, but upon enquiry would not state whom they represented. Ms Secretary believed she was giving evidence in her capacity as a First Nations leader on behalf of those concerned about alcohol-related harms in and around Darwin, rather than as the chairperson of the Gwalwa Daraniki Association. Ms Secretary says there was no intention or explicit mention of opposing the Dan Murphy’s development.

Gwalwa Daraniki Association later discovered it had been listed as an objector in the NTCAT Liquor Commission decision appeal. Gwalwa Daraniki Association formally wrote to NTCAT to have its name removed from the list of respondents, submitting that it neither objected to nor supported the development as it had never been formally approached. Accordingly, Ms Secretary felt that she, and the Gwalwa Daraniki Association by association, had been misrepresented in the process. This is particularly because the lawyers were found to have represented the Australian Hotels Association Northern Territory.

Primary concerns of Ms Secretary

Ms Secretary’s primary concerns were traffic and pedestrian safety. The major issue with the original location was the lack of pedestrian crossings and poor lighting. This was seen to create risks for people from the Kulaluk and Minmarama Park communities, as well as long-grass campers. Northern Territory Airports noted its willingness to improve crossings and lighting to give back to the community.

Ms Secretary and the Gwalwa Daraniki Association went on to state that the Dan Murphy’s development may provide relief in relation to concerns about pedestrian safety, and that NTCAT should grant Woolworths Group the opportunity to demonstrate how its design can contribute to solving social issues in Darwin.

Letter of support to Woolworths Group

On 6 May 2020, the Gwalwa Daraniki Association provided a formal letter of support for the Dan Murphy’s development at the proposed Bagot Road site, signed by numerous Kulaluk and Minmarama Park community members. Ms Secretary believed that these measures would have a tangible impact in reducing the harms caused by alcohol consumption and the resulting behaviours. Further to this, Ms Secretary told the Panel:

“I’ve lost family members... I’ve been lobbying government in relation to road safety and Woolworths Group/Endeavour are the first alcohol suppliers ever to consult with Indigenous people about road safety and pedestrian safety and concern for the welfare of our people that choose to drink.”

Ongoing consultation with the Gwalwa Daraniki Association

Endeavour held ongoing discussions with the Gwalwa Daraniki Association, through to the decision made by the Director of Liquor Licensing in December 2020, centred on feedback on the framework for Endeavour’s ‘Ongoing Engagement Strategy’.

The Gwalwa Daraniki Association provided an additional letter of support for the development on 25 September 2020, following discussions about the alternative proposed development site. This confirmed its support for the development “irrespective of the new site”, because it would, for the first time, address pedestrian movement across Bagot Road, Dick Ward Drive, McMillans Road and Sabine Road, and heighten safety.

Importantly, there has been no further update on the progress of these pedestrian safety measures. According to stakeholder consultations, the upgrades are currently unfunded.

Result of the NTCAT review

On 1 December 2019, NTCAT rejected Endeavour's application for review. The decision turned upon whether it was legally open to Woolworths Group to make the application in the first place. NTCAT concluded that the relevant liquor licensing laws did not permit such an application for premises that had not been built.³⁴²

Further consultations with key stakeholders (early to mid-2020)

Endeavour continued in its efforts to respond to the concerns around alcohol-related harm through this period. It re-engaged Professor Ryan to understand the expected effect of proposed harm mitigation measures, and to develop a strategy to consult at-risk communities. In February 2020, Professor Ryan visited Darwin for discussions with key stakeholders including Northern Territory Police, Larrakia Nation Aboriginal Corporation, Kulaluk and Minmarama Park communities (via the Gwalwa Daraniki Association), Darwin Indigenous Men's Service, the Airport Development Group, and takeaway liquor retailers. Forward Thinking, a consultancy, was also engaged to assist in parts of this research, including taking part in site visits and consultations.

Concurrently, Northern Territory Airports continued to communicate with Northern Territory Police, Acting Director of Road Safety and Drivesafe Northern Territory, and the Northern Territory Department of Infrastructure, Planning and Logistics concerning pedestrian safety and traffic management. It should be noted that none of these stakeholders were opposed to the Dan Murphy's development. In March 2020, Northern Territory Airports commissioned Cirqa, an urban mobility and traffic engineering consulting firm. It was required to provide an independent expert opinion on pedestrian safety options for the proposed Dan Murphy's development. To inform this opinion, Cirqa conducted numerous stakeholder consultations. Many stakeholders noted that while there was an obvious benefit to improved road infrastructure, some pedestrians would still engage in unsafe practices such as not crossing the road at the lights. Ultimately, Cirqa provided twelve pedestrian safety recommendations to Northern Territory Airports, which ranged from infrastructure instalments to education campaigns and changes to speed limits.

Community consultations

In May 2020, Endeavour engaged Metrix Consulting to conduct another community poll via telephone, to determine whether the extensive publicity surrounding the application had moved community sentiment. Of the 400 people surveyed, 61 per cent were either supportive or strongly supportive of the development, 27 per cent were neutral and 11 per cent opposed it.³⁴³ The survey sample was assumed to be representative of the Greater Darwin population.

Development of the Ongoing Engagement Strategy

In mid-2020, Professor Ryan began to develop the Ongoing Engagement Strategy, informed by discussions from site visits. The aim of the strategy was to acknowledge the possible effect on risky drinkers from the sale of alcohol, demonstrate Endeavour's commitment to being an industry leader in the responsible service of alcohol, and develop and support the implementation of alcohol-related harm management and minimisation measures. It also included numerous core commitments involving the implementation of priority measures from alcohol management plans, harm minimisation measures, and supply reduction and demand management measures. To develop the strategy further, an independent chair was to be elected by representatives from at-risk Aboriginal and Torres Strait Islander communities, and local firms with First Nations employees were to help facilitate the process of implementation.

"One lesson is to conduct a consultation where you are really listening to people, rather than trying to talk people into something. They need to get a deeper understanding of how concerned people are about alcohol."

- Dr John Boffa, Chief Medical Officer Public Health, Central Australian Aboriginal Congress (10 March 2021)

The strategy was distributed to various key stakeholders in August 2020. These stakeholders included the City of Darwin, the Gwalwa Daraniki Association, Northern Territory Airports, the Darwin Northern Suburbs Liquor Accord, the Bagot community, Danila Dilba and Yilli Housing. The phone conversations were originally to be held in person, but were inhibited by COVID-19 travel restrictions. The strategy was circulated to the Northern Territory Government, The Salvation Army, St Vincent de Paul Society, Mission Australia and Casuarina All Sports Club in September 2020. No substantive comments were made about the strategy, and Professor Ryan noted that the telephone conversations had somewhat limited success. Professor Ryan's final report was delivered to the Director of Liquor Licensing on 27 November 2020.

The proposed new site (mid to late 2020)

Prior to the decision of the Director of Liquor Licensing to approve the application, Woolworths Group proposed an alternative location. Northern Territory Airports had contacted other precinct members and the three Aboriginal communities to investigate how a new site might be received. Upon Northern Territory Airports' suggestion and the legislative change enabling this course of action, Endeavour pursued this option.

³⁴² Decision of the Northern Territory Civil and Administrative Tribunal dated 23 December 2019

³⁴³ Note figures do not add due to rounding

Engagement with the Bagot community and Danila Dilba Health Service

Previous contact with Danila Dilba Health Service and Bagot community

After the August 2018 phone call from Danila Dilba to Endeavour noting it did not wish to speak with an alcohol company, there was no communication until late 2020. Endeavour, out of respect for Danila Dilba's wishes not to be contacted, did not make any further attempts to directly engage during that period. Importantly, because Endeavour saw Danila Dilba as an intermediary for the Bagot community, no direct contact was made with the Bagot community until this point.

Even if Endeavour had been able to consult Danila Dilba and the Bagot community during this time, it is unclear whether these conversations would have been fruitful. However, it is worth noting that in July 2020, as part of the work undertaken by Professor Ryan for Endeavour, Forward Thinking contacted Ms Fejo-Frith from the Bagot community. In the record of the call, it was noted that Ms Fejo-Frith's primary concern was the location of the development.

Bagot community and Danila Dilba response to the proposed new site

In early September 2020, Northern Territory Airports met with Danila Dilba and Ms Fejo-Frith to discuss the new site. Northern Territory Airports provided the suggestion to move the store approximately one kilometre away from the original site, to McMillans Road. It is unclear whether Ms Fejo-Frith had any immediate reactions to this. But on 14 September 2020, she wrote directly to Northern Territory Airports – not Endeavour or Woolworths Group – confirming that the Bagot community “... would not object to a Dan Murphy's development being introduced to Darwin, if the store relocates from the original site on Bagot Road to a new site on McMillans Road opposite Sabine Road”.

Ms Fejo-Frith advised the Panel that this statement was not intended to be construed as support for the development. Ms Fejo-Frith remained concerned about alcohol-related harms in the Bagot community and other communities. The Bagot community's objection was conditional on the fact that Endeavour “followed all the rules about alcohol sales” such that the general public and persons camping around the new site were not put at more risk of harm.

On 14 September 2020, Ms Havnen of Danila Dilba also wrote to Northern Territory Airports.³⁴⁴ She noted that:

- Danila Dilba will continue to have reservations about the potential health impacts associated with a new large-format liquor store, particularly given the existing level of alcohol-related harm in the community;
- formal objection to the proposed Dan Murphy's was provided largely on the basis of harms to at-risk Aboriginal and Torres Strait Islander communities due to proximity. As a result, Danila Dilba would not support the development but would remain neutral; and
- Danila Dilba would not refrain from speaking or taking an active position on broader issues associated with alcohol-related harm, harm reduction, alcohol policy in the Northern Territory, or failures in relation to harm minimisation by liquor stores.

Notably, the Panel was told that the responses from Ms Fejo-Frith on behalf of the Bagot community and Ms Havnen on behalf of Danila Dilba were made in confidence to Northern Territory Airports, and were to be used only in discussions with the Chief Minister's Department regarding the possibility of a new site.³⁴⁵ It was understood by Ms Fejo-Frith and Ms Havnen that Northern Territory Airports shared this view.³⁴⁶

However, on 17 November 2020, Ms Havnen wrote to Northern Territory Airports that Woolworths Group and Endeavour had made various statements the week before implying that “Danila Dilba supports the alternative location, that Helen Fejo Frith supports the alternative locations, that NT Airports met with us on behalf of Endeavour Drinks and that these discussion somehow constitute community consultations”.

On 4 December 2020, Ms Havnen met with Endeavour executives in Sydney to discuss the Darwin Dan Murphy's development proposal. The chairperson of the Lowitja Institute, Ms Pat Anderson AO, also attended. This meeting was facilitated by Adam Goodes, a member of Woolworths Group's External Indigenous Advisory Panel. Ms Havnen indicated to the Panel that she instigated the meeting. While Endeavour informed the Panel that the meeting was cordial and constructive, Ms Havnen and Ms Anderson told the Panel that the meeting did not discuss the key question of whether or not the proposal would proceed, nor any of their concerns around the possibility of alcohol-related harms arising from the store. Danila Dilba has declined further contact with Endeavour.

³⁴⁴ Decision of the Director of Liquor Licensing dated 17 December 2020, Annexure F (p. 63)

³⁴⁵ Decision of the Director of Liquor Licensing dated 17 December 2020, Annexure F (p. 64)

³⁴⁶ Decision of the Director of Liquor Licensing dated 17 December 2020, Annexure F (p. 64)

FARE's open letter to the Chair of Woolworths Group

In the interim, between the announcement of a proposed new site and the decision made by the Director of Liquor Licensing, FARE sent an open letter to the Chair of Woolworths Group demanding that it "abandon [its] plans to build a Dan Murphy's in Darwin".

This letter was published in the Australian Financial Review on 9 December 2020, and signed by 45 organisations and community leaders. The full list of signatories is shown below.

Local Organisations

Organisation	Name	Role
Aboriginal Medical Service Alliance Northern Territory (AMSANT)	Barbara Shaw	Chairperson
Anyinginyi Health Aboriginal Corporation		General Manager
Aboriginal Medical Service Alliance Northern Territory	John Paterson	CEO
Tiwi Land Council	Gibson Farmer	Chairperson
Northern Land Council	Marion Scrymgour	CEO
Central Land Council	Joe Martin-Jard	CEO
Danila Dilba Health Service	Carol Stanislaus	Chairperson
	Olga Havnen	CEO
Yilli Rreung Housing Corporation	Leeanne Caton	CEO
Northern Australian Aboriginal Justice Agency	Colleen Rosas	Chairperson
	Priscilla Atkins	CEO
Yilli Rreung Trust	Kim Hill	Chairperson
Yilli Rreung Aboriginal Corporation	Theresa Roe	Chairperson
Darwin Aboriginal & Islander Women's Shelter	Regina Bennett	CEO
Council for Aboriginal Alcohol Programs Aboriginal Corporation	Jill Smith	CEO
Top End Aboriginal Bush Broadcasting Association	Don Baylis	General Manager
Central Australian Aboriginal Family Legal Unit	Phynea Clarke	CEO
Central Australian Aboriginal Congress	Graham Dowling	Chairperson
	Donna Ah Chee	CEO
Maritime Union of Australia	Thomas Mayor	National Indigenous Officer & NT Deputy Branch Secretary
Tiwi Island Training Education Board	Maria Harvey	CEO
Top End Aboriginal Bush Broadcasting Association	John Wilson	Chairperson
	Robyn Ragattieri	Business Manager
Deadly Enterprises	Shaun Tatipata	Director
North Australia Aboriginal Family Legal Service	Cassandra Carolin	A/CEO

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9. REVIEW OF THE COMMUNITY CONSULTATION PROCESS

Organisation	Name	Role
Bagot Community Advisory Group	Helen Fejo-Frith	President
Northern Territory Council of Social Service (NTCOSS)	Deborah Di Natale	CEO
Save the Children	Noelene Swanson	NT Director
CatholicCare NT	Jane Lloyd	Director
Anglicare NT	David Pugh	CEO
N/A	Ben Abbatangelo	Writer
Australian Medical Association NT	Dr Robert Parker	President
People's Alcohol Action Coalition	John Boffa	Spokesperson

Ally Organisations

Organisation	Name	Role
Indigenous Allied Health Australia	Donna Murray	CEO
National Association of Aboriginal and Torres Strait Islander Health Workers and Practitioners	Karl Briscoe	CEO
NSW Aboriginal Education Consultative Group	Cindy Berwick	President
First Nations Media	Catherine Liddle	CEO
ACT Aboriginal and Torres Strait Islander Elected Body	Katrina Fanning	Chairperson
Congress of Aboriginal and Torres Strait Islander Nurses and Midwives	Roianne West	CEO
National Aboriginal Community Controlled Health Organisation	Donnella Mills	Chairperson
Victorian Aboriginal Community Controlled Health Organisation	Jill Gallagher	CEO
Healing Foundation	Fiona Petersen	CEO
Aboriginal Health Council of Western Australia	Vicki O'Donnell	Chairperson
National Aboriginal and Torres Strait Islander Legal Services	Priscilla Atkins	Co-Chair
Lowitja Institute	Pat Anderson AO	Chairperson
Foundation for Alcohol Research and Education	Caterina Giorgi	CEO

Decision by the Director of Liquor Licensing

Following the 2020 amendments, Northern Territory Airports wrote to the Director of Liquor Licensing regarding the change in the proposed location of the Dan Murphy's development to McMillans Road. In this letter, Northern Territory Airports stated that it had consulted with various stakeholders, whose single biggest concern was the fact that the site was a close walk from the Bagot community. Groups that provided positive or neutral responses toward the new site included Eaton Fresh Markets, Bagot community, Danila Dilba Health Service, Gwalwa Daraniki Association, Aussie Pooch Nutrition and Wellbeing, Flip Out, Kingpin Family Entertainment Centre, and Little Flyers Childcare Darwin.

On 17 December 2020, Endeavour received a decision notice from the Director of Liquor Licensing advising that he proposed to grant the licence.³⁴⁷

9.5 Post-approval consultation (late 2020 to early 2021)

Following the Director of Liquor Licensing's decision two consultation processes emerged concurrently. The first involved the continuation of Endeavour's Ongoing Engagement Strategy. The second stemmed from the commissioning of this Independent Panel Review.

Endeavour consultation following approval from the Director of Liquor Licensing

Endeavour notified a number of key stakeholders of the decision by the Director of Liquor Licensing. It received a notable response from the City of Darwin. The Council confirmed that it would continue to engage with Endeavour, that it was appreciative of being able to provide input into the community consultation process from the start, and that it would like to provide further input into Endeavour's responsible service of alcohol management plan. Further, the Council suggested that Endeavour representatives accompany the Assertive Outreach Team, which engages with vulnerable people in City-owned public spaces. Endeavour indicated it would be willing to take up the Council's offer.

Recognising the need for greater long-term engagement with Aboriginal and Torres Strait Islander communities, Endeavour also sought to engage an external consultancy to help develop a local working group, though this engagement has not yet commenced. The group is intended to meet quarterly and includes representatives of the Gwalwa Daraniki Association, Northern Territory Airports and the City of Darwin, as well as health experts and other relevant stakeholders. It aims to gather feedback from various stakeholders about

ways Endeavour can contribute to alcohol management and harm minimisation.

Endeavour also reached out to Danila Dilba on two separate occasions, requesting input on harm minimisation strategies and the responsible service of alcohol management plan, and to get a better understanding of Danila Dilba's concerns. It was noted in this correspondence that Endeavour would be willing to continue this engagement despite the fact that the licensing decision was unfavourable for Danila Dilba, and that the conditions imposed may not fully address its concerns regarding alcohol-related harms. No response was received from Danila Dilba, with Olga Havnen stating that the organisation was only interested in having conversations about whether or not the development was going ahead.

The Panel was informed that in January 2021, a member of the Bagot Advisory Committee met with Endeavour's Head of External Affairs and Sustainability. That person expressed an interest in participating in future consultations, particularly those relating to alcohol management and pedestrian issues. This discussion occurred during continuing consultations with Larrakia Nation and Gwalwa Daraniki Association as part of the Ongoing Engagement Strategy, and a consultation with Mission Australia, which operates the Sobering Up Shelter.

Organisations including AMSANT and NTCOSS declined to meet with Endeavour until after this Independent Panel Review. The Panel was advised that this refusal was made on the basis of two key factors: Endeavour had misrepresented the views and extent of engagement with the organisations, and the 'trust levels are low'; and the meeting with Endeavour to discuss the Darwin Dan Murphy's will be unproductive due to previous poor engagement with relevant organisations.

"The space up here [in Darwin] is different to any jurisdiction down South. There are a number of Aboriginal and Torres Strait Islander health organisations and services – these tend to be the "go-to" for this type of proposal."

- Jill Smith, CEO, Council for Aboriginal Alcohol Programs Aboriginal Corporation (8 March 2021)

However, both AMSANT and NTCOSS made it clear this did not mean they were unwilling to engage or participate in consultation, having indicated they would appreciate meaningful engagement with Woolworths Group on this matter, through discussions with the Board.

347 Decision of the Director of Liquor Licensing dated 17 December 2020

Endeavour hosted a community consultation pop-up in Darwin's CBD in February 2021. A total of 139 community members visited over two days. The aim was for community members to share their opinions and views, and help Endeavour better understand the community's views and circumstances.

Consultation through the Independent Panel Review process

On 16 December 2020, the day before the Director of Liquor Licensing approved its application, Woolworths Group committed to establish an Independent Panel Review into the proposal to develop a Dan Murphy's in Darwin and provide a report to the Woolworths Group Board. It would be run "in parallel with Endeavour's continued... community engagement".³⁴⁸ Woolworths Group also committed to commencing no work on the site of the proposed store until the review was completed. On 18 December 2020, Woolworths Group wrote to the Northern Territory Government and Opposition, the Commonwealth Government, shareholders, Reconciliation Australia, Cricket Australia and the City of Darwin announcing the licence approval and its decision to run a review "...to not only lean into the concerns that [community groups] have, but to find ways that we may update our Responsible Service of Alcohol Management Plan to better address these issues".

Pursuant to the Terms of Reference, the Panel undertook an extensive stakeholder consultation process, meeting with Aboriginal and Torres Strait Islander peoples, business, health and education groups and other sectors. It contacted 292 individuals or organisations, and all were given the opportunity to meet with the Panel. Of these, 160 provided a written submission or met with the Panel, including over fifty meetings over a two-week in-person consultation period in Darwin from 2 to 12 March 2021. A full list of stakeholders whom the Panel consulted can be found in Appendix A – List of stakeholders consulted. Stakeholders and other persons who met with the Panel included the following:

- **Objectors to the initial licence application** - of the 18 objectors to the licence application, 15 were contacted and six were consulted with or sent a written submission. Of the eight who were contacted and did not reply, five represented competitors to the proposed Dan Murphy's;
- **AMSANT and NTCOSS** - both organisations had refused to meet with Endeavour until after the review process, but met with the Panel in person;
- **Danila Dilba Health Service** - Danila Dilba readily met with the Panel, and provided significant documentation around the health impacts of alcohol

and the prevalence of diseases and other illnesses within its client base that are caused or exacerbated by alcohol;

- **Bagot community** - the Panel met with 10 community members including Ms Fejo-Frith in person, at the Bagot community. The format was an open town hall meeting, and many community members stayed afterward to talk to Panel members individually. The Panel subsequently received positive feedback from Ms Fejo-Frith about the consultation;

"They did sit and they did listen. They didn't interfere when you were telling your side of the story, they waited till you were finished, and he also said to us that we put across some very good points."

-Helen Fejo-Frith to SBS The Point, 31 March 2021

- **Gwalwa Daraniki Association** - the Gwalwa Daraniki Association met with the Panel in a meeting with leadership on site at the Kulaluk community. Again, this was an open and free ranging discussion;
- **Larrakia Nation Aboriginal Corporation** - the Panel met with senior leaders and operational staff members of Larrakia Nation, with the latter occurring at the operational centre for Night and Day Patrols;
- **All organisations that signed the FARE open letter** - the Panel contacted all signatories, both local organisations and allies, of FARE's open letter to the Chair of Woolworths Group.³⁴⁹ Of those contacted, individuals representing 44.4 per cent of local organisations and 37.5 per cent of all organisations who signed the letter met or provided a submission to the Panel;
- **10 leading experts on Aboriginal and Torres Strait Islander health** - researchers from the Menzies School of Health Research and Indigenous Allied Health Australia generously shared their expertise and research to inform a long-term view of the associated health concerns, and how they pertain to the current liquor market;
- **General public** - the Panel hosted a round-table session for the public to give feedback on the proposal. Due to the ongoing COVID-19 pandemic, registration was required via an online portal, which was advertised through television and newspaper channels; and

348 Woolworths Group (2020), 'Woolworths Group commits to Independent Panel Review of proposed Dan Murphy's Darwin development'

349 FARE (2020), 'Open letter to the Chair of Woolworths'

- **Interested parties after the in-person consultation period** - members of the Panel permanently living in Darwin continued to meet with business and other stakeholders in person after the conclusion of the two-week in-person consultation period.

The extent of this consultation process speaks to the degree of interest the community has in the Dan Murphy's Darwin proposal.

To its credit, Woolworths Group recognised "there are some in the community that feel they have not been adequately consulted regarding the proposed

store".³⁵⁰ It responded by establishing this review, taking care to enshrine both independence and legitimacy. Independence was assured by allowing Panel Chair Danny Gilbert to appoint the panel members without Woolworths Group's approval and by readily accepting all consultation deemed necessary by the Panel, including of Woolworths Group's own personnel. Legitimacy was assisted by not commencing construction on the development, committing to take into account the Panel's recommendations, and notifying key partners of its intentions with the Panel review.

Reporting to the Woolworths Group Board on consultation and the proposed Dan Murphy's development generally

It is apparent to the Panel that there has been some level of misalignment between the strategic intention of Woolworths Group's leadership and the actions of the Endeavour operational team progressing the development. In particular, when reports were provided to the Woolworths Group Board about the Darwin Dan Murphy's proposal the focus was on the community support for the development. The concerns of opponents to the development were not sufficiently aired or adequately explained until much later in the process.

The small number of early reports given to the Woolworths Group Board, in 2017 and 2018, were very brief. They focused on the liquor licence application process, negotiations with the Northern Territory Government and how legislation relating to trading area restrictions for liquor outlets might be challenged. These reports also focused on the efforts that had been made to influence positive public opinion and media coverage for the proposed development.

Reporting to the Board increased throughout 2019. However, the reports continued to be very brief and remained focused on the application process and the hearings before the Liquor Commission and NTCAT. There was a brief reference to engagement with the Northern Territory Government and its support for the Dan Murphy's Darwin development.

Reports to the Board throughout 2020 continued to primarily focus on the application and legal processes. In the first half of 2020, the concerns of stakeholders began to emerge in the reporting, but were focused on the anti-alcohol lobby, FARE, and were presented next to reports of strong community and government support, including from local Aboriginal and Torres Strait Islander communities. Evidence of support was arguably overstated in reports and Woolworths Group may have overly focussed on FARE, which it regarded as an ideological opponent. Opposition to FARE may have captured a disproportionate consideration of the reputational and other issues at stake. In any event, the Board did not get a sense of the objections from health organisations or community-based opposition to the proposal. There was, however, a clear directive from the Board to the Endeavour team to engage with local Aboriginal and Torres Strait Islander communities and leaders.

The Panel notes that the challenges of the COVID-19 pandemic hampered Woolworths Group's ability to engage in-person with community members. This also coincided with a focus by the organisation on the delivery of essential food and services to communities, as part of its COVID-19 response. This impacted the level of reporting to the Board on other issues facing the business, such as the Darwin Dan Murphy's development.

Notwithstanding the challenges of the COVID-19 pandemic, overall there appeared to be clear gaps in reporting to the Board around community concerns and community impacts. These gaps in part reflected the shortcomings of the community consultation process itself. In short, the reports presented an overly optimistic and too narrow a view.

The Panel's view is that the responsibility of leaders increases when there are important issues at stake concerning the vulnerability of people and communities. Some business decisions require a balance between the interests of the business and the interests of the communities the business serves and impacts. This requires vigilance on the part of leaders and boards to ensure they have the right information. Having access to high-quality, timely information as to the nature and extent of stakeholder concerns is crucial to being able to effectively govern and lead an organisation. When considered against its own aspirations of strong corporate leadership, the seeming inability of the executive management of Endeavour and the Woolworths Group Board to get on top of this issue at a much earlier point was a failure.

350 Woolworths Group (2020), 'Woolworths Group commits to Independent Panel Review of proposed Dan Murphy's Darwin development'

9.6 Summary

Woolworths Group and Endeavour's overall approach to the consultation process has been seen by many stakeholders to be more through the lens of process and outcome, than through the lens of cultivating and maintaining long-term relationships with the local community. Woolworths Group did not seek advice from the outset from Aboriginal and Torres Strait Islander leaders or experts about how to design a robust and culturally safe consultation process. As a general observation, Endeavour saw the community consultation process as an opportunity to gather feedback on the store proposal, which led to a narrow focus on responsible service of alcohol and traffic safety measures. It did not view the purpose of the process as validating the threshold question of whether the store should go ahead or not.

“Woolworths needed to conduct stakeholder mapping to engage people.”

- Olga Havnen, CEO, Danila Dilba Health Service (4 March 2021)

This consultation process mirrored Endeavour's general approach to store openings in other parts of Australia but did not reflect the unique circumstances of Darwin and the Northern Territory. This approach also assumed that Woolworths Group and Endeavour had a level of support and trust in Darwin, which they did not. Numerous stakeholders said they were unaware of any long-term community involvement or initiatives from Woolworths Group or Endeavour.³⁵¹ The approach also relied on an internal understanding of the brand and its implications, rather than an external understanding of the impact of the decision on the community. The consultation process was used to identify any functional issues the community may have had about the store (for example, about traffic, lighting or security), mitigate those concerns, and open the store. This is understandable from a purely commercial perspective. Several stakeholders expressed the view to the Panel that in its determination to proceed with the store, Endeavour ignored, dismissed or did not adequately address many significant community concerns, particularly those concerning the broader impact and costs of alcohol related harm.

Many stakeholders consulted by the Panel expressed the view that Endeavour's consultation process was narrow in its identification of stakeholders, often formulaic in nature, and culturally unaware and insensitive towards local Aboriginal and Torres Strait Islander communities. These stakeholders considered that the consultation process focused on furthering commercial objectives at the expense of establishing and maintaining good relations with the local community.

The combination of these factors created a deep feeling of bad faith among many members of the local Aboriginal and Torres Strait Islander population, community health organisations, land councils, peak bodies and other groups, who became more unwilling to engage with the consultation process as it progressed. The roll-out of this consultation process through pro forma letters furthered an impression among these groups that this was another example of corporations from the dominant culture not seriously engaging with local and Aboriginal and Torres Strait Islander concerns. This feeling meant that despite repeated attempts to contact local communities and good intentions from members of the Endeavour team, there was no 'credit in the bank' to allow them to engage meaningfully with the local community.

“It's a question of ethics, morality and conscience. It is unconscionable. We're the ones who are raising the kids.”

- Pat Anderson AO, Chairperson, Lowitja Institute (9 March 2021)

Endeavour should have initiated engagement with local Aboriginal and Torres Strait Islander communities in a culturally safe manner, rather than sending a generic letter to a community health organisation that had no formal role in representing these communities. It should have engaged Aboriginal and Torres Strait Islander groups as shared decision-makers in the proposed development, rather than as many of them saw it, viewing them as a target for consultation for a predetermined outcome. Difficult though it would have been, Endeavour should have engaged more widely among the Aboriginal and Torres Strait Islander population of Darwin, including the long grass population. It should have engaged local Aboriginal and Torres Strait Islander consultation experts in Darwin who had a deep understanding of the concerns of the population. And it should have engaged more thoroughly with the concerns of community health organisations and other experts around the potential for alcohol-related harms. While there is likely majority support for the proposed Darwin Dan Murphy's development, the concerns of the substantial minority of Aboriginal and Torres Strait Islander peoples and supporting groups should have been given more weight in Endeavour's deliberations.

Had Endeavour taken a more nuanced approach to consultation from the outset (for example, by being more proactive and transparent with the community, or by facilitating contact through intermediaries or advisers), community stakeholders might have been more prepared to engage with its process in good faith, and the feeling of anger, disappointment and frustration among many members of the community may have been avoided.

351 Woolworths Group and Endeavour Group community contributions are discussed in Chapter 3.4

10

Woolworths Group's Commitment to and Relationship with Aboriginal and Torres Strait Islander Australians

Woolworths Group's role in working with Aboriginal and Torres Strait Islander communities to close the gap is essential, particularly given its footprint in Australian society. In size and reach, its influence is unparalleled. Woolworths Group is committed to working alongside Aboriginal and Torres Strait Islander communities, has pledged its support for the Uluru Statement from the Heart and introduced its second Reconciliation Action Plan. The company aspires to bring these commitments to life by building relationships with Aboriginal and Torres Strait Islander communities, showing respect for their cultures, histories and rights, providing opportunities to support their advancement and implementing good internal governance mechanisms to oversee these measures. However, the challenge for Woolworths Group has been to mirror its declared commitments in its actions. Despite Woolworths Group's good intentions, its decision-making concerning the proposed Dan Murphy's Darwin development may have led Woolworths Group to fall short of implementing its corporate purpose, demonstrating its legitimacy and building trust with relevant stakeholders.

10.1 Ambitions to support Aboriginal and Torres Strait Islander recognition and empowerment

Many corporations have committed to building relationships that support and recognise the unique position and experiences of Aboriginal and Torres Strait Islander peoples. Woolworths Group is no exception. For the past decade, Woolworths Group has publicly voiced its position on and aspirations for Aboriginal and Torres Strait Islander empowerment. It is noted that Woolworths Group has made substantial effort in developing its commitments and processes. This is being led from the highest level. Recently, Woolworths Group's Managing Director and CEO Brad Banducci said that:

"We have a deep respect for our Aboriginal and Torres Strait Islander team members, customers and all of those who live in the communities we serve. We firmly believe they should have a voice in decisions that affect them. That's why we support the Uluru Statement from the Heart, and the recommendations of the Referendum Council... A First Nations voice to Parliament enshrined in our Constitution and a Makarrata Commission to oversee agreement making and truth telling are critical steps toward reconciliation. They allow First Nations people to claim their rightful place in our nation and enable us to move forward together."

- Brad Banducci, Managing Director and CEO, Woolworths Group (2019)

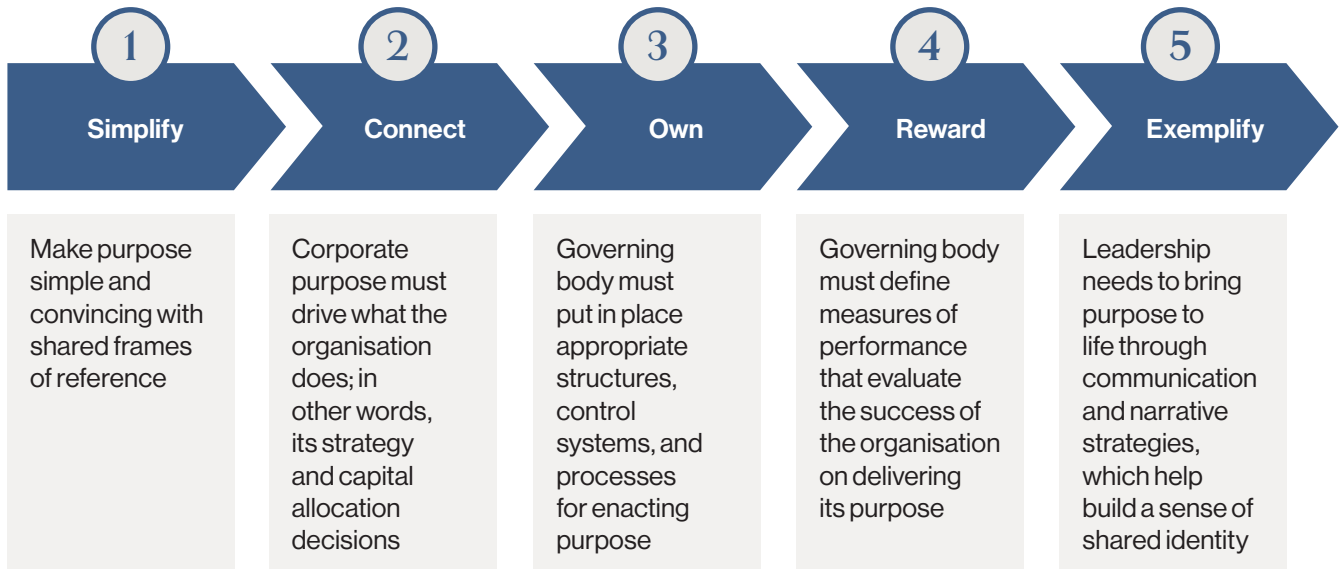
However, Woolworths Group understands that there is more to be done than simply stating good intentions. Accordingly, it aims to collaborate and partner to effect change beyond the borders of its stores – that is, in communities, supply chains and other industries. According to its most recent sustainability report, Woolworths Group is "no longer satisfied with simply limiting detrimental impacts".³⁵² This speaks to the depth at which Woolworths Group thinks about its reputation as a company that works with communities to create better outcomes and build resilience. The challenge for Woolworths Group is reflecting the strength of its declared principles and purpose with actions on the ground, and being transparent about its processes and progress.

Professor Colin Mayer developed a five-step framework for enacting purpose, in consultation with a variety of international partner organisations, detailed on the following page.

352 Woolworths Group (2020), 'Sustainability Report'

Exhibit 27:

Five-step framework for enacting corporate purpose



Source: Adapted from Colin Mayer (2020), *Enacting Purpose within the modern corporation*³⁵³

To what extent Woolworths Group has enacted the 'simplify', 'connect' and 'own' steps – that is, to what extent it has incorporated its aspirations and commitments into the heart of its culture and decision-making processes – is an open question. How it has implemented its purpose and intent – as encompassed in the 'reward' and 'exemplify' steps – is also an open question in relation to Aboriginal and Torres Strait Islander peoples, especially those in the Northern Territory. To answer these questions, it is necessary to assess Woolworths Group's Reconciliation Action Plan (RAP).

10.2 Introducing its second Reconciliation Action Plan

The most recent Woolworths Group RAP, introduced in July 2019 at the Innovate level, aims to contribute to reconciliation by:

- listening to and learning from the knowledge and experience of Aboriginal and Torres Strait Islander peoples past and present especially in matters affecting Country;
 - building strong and lasting relationships with Aboriginal and Torres Strait Islander peoples, based on the principles of equal partnership, social justice and respect for history in order to make a positive impact where it is needed most;
 - building recognition and respect for the value of Aboriginal and Torres Strait Islander cultures, histories and achievements; and
 - a renewed focus on building business opportunities with Aboriginal and Torres Strait Islander suppliers, while ensuring access to sustainable jobs and opportunities that create multi-generational benefits for families and communities.³⁵⁴
- advocating for and actively supporting the Uluru Statement from the Heart by encouraging constitutional change and structural reform to empower First Nations peoples with recognition and voice;

353 University of Oxford - Said School of Business (2020), 'Enacting purpose within the modern corporation'





354 Woolworths Group (2019), 'Reconciliation Action Plan'

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These contributions have manifested in several key actions and deliverables:

Exhibit 28:

Woolworths Group's declared actions and deliverables

Category	Actions	Examples of deliverables
 Relationships	<ul style="list-style-type: none"> Actively monitor RAP development and implementation Participate in National Reconciliation Week (NRW) and promote NRW in stores Develop and maintain mutually beneficial relationships with First Nations peoples and communities 	<ul style="list-style-type: none"> Ensure that Aboriginal and Torres Strait Islander peoples are represented on the Reconciliation Working Group Develop and implement an engagement plan to work with First Nations stakeholders
 Respect	<ul style="list-style-type: none"> Engage team members in continuous cultural learning to increase understanding and appreciation of First Nations cultures, history and achievements Foster an understanding of the significance of cultural protocols such as Welcome to Country 	<ul style="list-style-type: none"> Continue to develop and implement First Nations cultural awareness programs Develop and maintain list of key contacts for organising a Welcome to Country and maintaining respectful partnerships
 Opportunities	<ul style="list-style-type: none"> Investigate opportunities to improve and increase First Nations employment outcomes within the workplace Investigate opportunities to incorporate First Nations supplier diversity within the organisation 	<ul style="list-style-type: none"> Engage with First Nations team members to evaluate employment strategies Review and update procurement policies and procedures to remove barriers for First Nations suppliers
 Governance	<ul style="list-style-type: none"> Report RAP achievements, challenges and learnings to Reconciliation Australia Report RAP achievements internally and externally Review, refresh and update RAP periodically 	<ul style="list-style-type: none"> Collect data for RAP Impact Measurement Publicly report RAP achievements, challenges and learnings Liaise with Reconciliation Australia to develop new RAP based on learnings

Source: Woolworths Group – Reconciliation Action Plan (2019); Panel analysis (2021)

Note: The list of actions and deliverables are not exhaustive. Please see the full Woolworths Reconciliation Action Plan for more details on specific actions and deliverables, and their associated timelines.

Key among these actions, as said by Brad Banducci in Woolworths Group's 2019 RAP, were "employment, community engagement via [Woolworths Group's] network of stores and building relationships with Aboriginal and Torres Strait Islander suppliers".³⁵⁵ In all of its efforts, Woolworths Group has clearly articulated its purpose and commitment to building strong and lasting relationships with Aboriginal and Torres Strait Islander peoples.

It is noted that a substantial amount of time had elapsed between Woolworths Group's first RAP in 2011 and its 2019 RAP. Stakeholders consulted by the Panel pointed out that continuity is imperative in achieving organisational reconciliation aspirations. It is demonstrative of an organisation that is monitoring and tracking progress against commitments, reporting on achievements, challenges and learnings, and striving to implement initiatives that better mitigate disadvantage.

Woolworths Group's initial RAP laid the foundations for the organisation's reconciliation efforts by establishing the four key pillars outlined in Exhibit 11. These pillars were formed to support Woolworths Group's overarching objectives of supporting Aboriginal and Torres Strait Islander people to access and retain jobs, as well as working with customers and First Nations supply partners to provide opportunities and improve outcomes.

In 2011, former Woolworths Group CEO Michael Luscombe said:

"We have in the last year, through formal pre-employment programs, offered jobs to more than 200 Aboriginal and Torres Strait Islander people... The challenge ahead for all is to ensure that Aboriginal and Torres Strait Islander Australians are provided with an opportunity to succeed, both in their employment and their wider communities."

- Michael Luscombe, former CEO, Woolworths Group (2011)

But the level of engagement from Woolworths Group, in terms of its development of stretch goals and its willingness to pursue greater aspirations, was not as might have been hoped.

This is particularly pertinent given the potential for Woolworths Group to influence meaningful outcomes for First Nations peoples across Australia. It has one of, if not the most, substantive physical footprint amongst Australian corporations.

Nonetheless, between 2012 and 2019, there was little consultation with Reconciliation Australia. That is not to say that Woolworths Group did not show its commitment and potential. Woolworths Group continued implementing its First Nations employment strategy and engaging its employees in cultural awareness and support programs, evidenced in its Corporate Governance Statements through to 2019.

Should this level of rigour be applied to other facets of empowerment, including retention of Aboriginal and Torres Strait Islander employees, building lasting and localised relationships with First Nations communities, continuing to expand Aboriginal and Torres Strait Islander supplier connections, and deeply embedding cultural awareness and respect within its own organisation, then Woolworths Group will strengthen its contribution to reconciliation. Woolworths Group's 2019 RAP is clearly a very positive and welcome step.

Exhibit 29:

Woolworths Group's Corporate Governance initiatives

Year	Objective statement	Initiatives and outcomes
2013	Woolworths Group's ongoing commitment to the reconciliation process will see the organisation continue to assist Aboriginal and Torres Strait Islander job-seekers to access employment opportunities through Woolworths Group's business	<ul style="list-style-type: none"> • Introduced cultural competency training and diversity awareness as a core skill program for managers • Proactively recruited Aboriginal and Torres Strait Islander peoples through community-based pre-employment programs • Signed with Supply Nation, committing to continue to support First Nations suppliers • Recognised NAIDOC week, celebrated it internally and supported local communities in their celebrations
2015		<ul style="list-style-type: none"> • Continued to proactively recruit First Nations job-seekers through formal and informal access to work programs – 1,090 Aboriginal and Torres Strait Islander people started between June 2014 and June 2015 • Continued to work with Supply Nation • Continued commitment to Jawun, a not-for-profit organisation supporting Aboriginal and Torres Strait Islander communities by providing skilled corporate secondees to assist where help is needed • Recognised NAIDOC week and celebrated this internally and with customers
2017	Woolworths Group is committed to increasing Aboriginal and Torres Strait Islander employment opportunities in its business	<ul style="list-style-type: none"> • Set target to recruit an additional 1,600 First Nations job-seekers by 2019 and for First Nations peoples to make up at least 2% of store team and graduates by 2020 • Since launching the 'Resourcing the Future' program in 2015, Woolworths Group has hired 952 First Nations job-seekers in permanent part-time employment roles across 328 stores • Continued to develop an Aboriginal and Torres Strait Islander peoples talent strategy • Continued partnership between Woolworths Group and Jawun, in areas such as marketing and business planning

Source: Woolworths Group (2013, 2015, 2017) – Corporate Governance Statement;^{356, 357, 358} Panel analysis (2021)

356 Woolworths Group (2013), 'Annual Report – Corporate Governance Statement'

357 Woolworths Group (2015), 'Corporate Governance Statement'

358 Woolworths Group (2017), 'Corporate Governance Statement'

10.3 Meeting aspirations and commitments to support Aboriginal and Torres Strait Island peoples

The Panel has considered this question by reference to the four pillars established in Woolworths Group's 2011 and 2019 RAPs: relationships, respect, opportunities and governance. The following views are by and large the expression of what the Panel heard from the Aboriginal and Torres Strait Islander people and organisations consulted in Darwin and the Northern Territory, as well as several well-known Aboriginal and Torres Strait Islander leaders across Australia.

Relationships

There are approximately 75,000 Aboriginal and Torres Strait Islander people living in the Northern Territory, comprising approximately 30 per cent of its entire population. Of this, an estimated 20,000 plus First Nations peoples live in Darwin, at any one time, though the actual figure fluctuates through the year.

Woolworths Group's relationship with these 20,000 Aboriginal and Torres Strait Islander peoples of Darwin, and more broadly the Northern Territory, is limited. As part of the process of securing the licence to operate the proposed Darwin Dan Murphy's development, Woolworths Group consulted with three small Aboriginal and Torres Strait Islander communities, namely the Bagot, Kulaluk and Minmarama Park communities. The number of Aboriginal and Torres Strait Islander residents who live in these communities at any time would be unlikely to exceed 1,500 people. The quality of the consultation with these communities has been much contested by them. The Kulaluk and Minmarama Park communities now support the Dan Murphy's proposal, while the Bagot community remains firmly opposed.

The Panel's assessment of the quality of the consultation process is that it has been questionable. Woolworths Group's engagement with the broader Aboriginal and Torres Strait Islander population beyond these three communities was limited. Further, Woolworths Group has been operating in Darwin since 1962. Yet various community stakeholders say that over this long period, Woolworths Group has made no sustained attempt to build trusted long-term relationships with the broader Aboriginal and Torres Strait Islander communities of Darwin and the Northern Territory. These stakeholders also say that Woolworths Group has not attempted to take sufficient initiative on the destructive alcohol issues facing the community.

Considering these stakeholder views, the decision-making process behind the Dan Murphy's development

can be seen to stand in contrast to the commitments and aspirations Woolworths Group stated under the 'Relationships' pillar of its RAP. In particular, it failed to sufficiently identify key Aboriginal and Torres Strait Islander stakeholders, and to develop and implement an engagement plan to support positive outcomes for the Aboriginal and Torres Strait Islander communities. However, the Panel does note that in the later stages of the consultation process, Woolworths Group made genuine efforts to establish relationships with notable Aboriginal and Torres Strait Islander organisations as part of its Ongoing Engagement Strategy. This included Danila Dilba Health Service and AMSANT.

Woolworths Group has also extended an offer to address the Kulaluk and Minmarama Park communities' concerns surrounding pedestrian and traffic management, given the increased volume of traffic that a store would bring. It speaks to Woolworths Group's recognition of the broader issues that may be associated with the proposed Dan Murphy's development, and the importance of these issues in the context of furthering its relationships with local Aboriginal and Torres Strait Islander communities.

Respect

One of the primary contributions that Woolworths Group makes to promoting respect for Aboriginal and Torres Strait Islander peoples is through National Aborigines and Islanders Day Observance Committee (NAIDOC) Week. In the 2020 celebrations, Woolworths Group was an official sponsor for NAIDOC and further contributed as the NAIDOC Week poster partner. This facilitated the distribution of approximately 200,000 NAIDOC posters from 1,000 Woolworths Group outlets across Australia. The National NAIDOC Committee co-chairs Pat Thompson and John Paul Janke said: "Woolworths Group has in recent times been rightly viewed as a firm supporter of Aboriginal and Torres Strait Islander cultures, peoples and heritage".³⁵⁹

"The continuation of this partnership with the Woolworths Group significantly assists us in spreading the reach of NAIDOC Week celebrations to a wider audience and helping them gain a greater understanding and awareness of Aboriginal and Torres Strait Islander peoples, our diverse cultures and our rich histories."

- Pat Thompson and John Paul, Co-Chairs, National NAIDOC Committee (2020)

359 Shahnai Wellington (2021), SBS News, 'NAIDOC Committee reviews Woolworths partnership due to community concerns', Accessed 18 March 2021

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But, as both the Aboriginal and Torres Strait Islander and non-Indigenous critics of the Dan Murphy's proposal assert with conviction, Woolworths Group did not bring to the proposal an adequate understanding of the culture, histories and rights of Aboriginal and Torres Strait Islander peoples. There was an insufficient understanding of the importance of appropriate cultural consultation, or the considerable suffering and harm that Aboriginal and Torres Strait Islander peoples suffer as a result of excessive alcohol consumption in wider Darwin and its feeder locations.

Out of concerns about the Dan Murphy's Darwin development, it has been reported that the National NAIDOC Committee suspended talks with Woolworths Group regarding an official partnership for NAIDOC Week 2021. The Panel is informed by Woolworths Group that the National NAIDOC Committee has since resumed talks with the company.

"The [National NAIDOC Committee] supports the significant concerns over the development raised by the 45 Aboriginal and Torres Strait Islander community and health organisations. We strongly urge Woolworths Group to work with the Aboriginal communities, leaders and other stakeholders in Darwin to help create a stronger, healthier and more resilient community."

- National NAIDOC Committee (25 February 2021)

Woolworths Group's approach in relation to the Dan Murphy's Darwin proposal appears to be somewhat of a departure from its clearly articulated position on fostering and supporting respect for Aboriginal and Torres Strait Islander peoples. Similarly with the Panel's assessment of Woolworths Group's performance under its 'Relationships' pillar, it regards the company's performance under the 'Respect' pillar to be inadequate.

Reconciliation Australia looks to maintain open and ongoing dialogue with organisations that have approved RAPs. This includes the consideration of the views of individuals and organisations concerning commitments to existing approved RAPs.

The Panel notes that in November 2020, Reconciliation Australia instigated an investigation into Telstra's RAP and it subsequently revoked Telstra's 'Elevate' RAP. Karen Mundine notes that "Telstra has shown humility in its response and a clear understanding of the need to do better. Rather than make excuses, Telstra has taken ownership of the issue, with Andy Penn as CEO, leading from the top. Telstra has demonstrated its understanding

of the need to listen more and value the relationships Telstra says are important to the company".

On 18 February 2021, 32 Aboriginal and Torres Strait Islander organisations and individuals wrote to Reconciliation Australia asking Reconciliation Australia to revoke Woolworths Group's RAP, which included the following comment:

"Over the past five years, Woolworths has relentlessly fought to build what will be one of Australia's largest alcohol stores near three dry Aboriginal communities in Darwin. Woolworths has pursued the Dan Murphy's despite strong opposition from Aboriginal and Torres Strait Islander community and health organisations, and in the full knowledge that this store will increase alcohol harm."

- Open letter signed by 32 Aboriginal and Torres Strait Islander health and community organisations (23 February 2021)

Reconciliation Australia has answered the call to make a decision on Woolworth Group's RAP by engaging in discussions with Woolworths Group's executives and local community groups to understand both positions. Concerns about the size, scale, and potential health impacts were communicated in these discussions. Having understood the concerns of Reconciliation Australia and the broader community, Woolworths Group commissioned this Independent Panel Review in December 2020. This was demonstrative of an immediate and proactive response by Woolworths Group. Reconciliation Australia has informed the Panel that it will await the report of this Independent Review Panel and Woolworths Group's response before making a final decision.³⁶⁰

Opportunities

Woolworths Group is the largest single recipient of funding from the Commonwealth Government under the Employment Parity Initiative. Approximately \$25.2m of Commonwealth Government funding is to be used to increase Aboriginal and Torres Strait Islander employment in large corporations to 3 per cent - the proportion of Australia's population comprised of Aboriginal and Torres Strait Islander peoples.³⁶¹

In the most recent five years of this initiative, Woolworths Group has helped employ – through its partnership with Diversity Dimensions – around 3,200 Aboriginal

³⁶⁰ Reconciliation Australia (2021), 'Response re Woolworths Group Innovation RAP'

³⁶¹ The Guardian (2021), 'Crown among big companies given more than \$90m by government to employ Aboriginal people'

and Torres Strait Islander job-seekers.³⁶² Diversity Dimensions is a Sydney-based organisation that partners with corporations, government and higher education organisations to attract and place Aboriginal and Torres Strait Islander job-seekers within the national workforce.

Between 2020 and 2021, six-month retention rates have ranged between 65 per cent and 70 per cent. As of 1 March 2021, these efforts have brought the number of Aboriginal and Torres Strait Islander team members to: 4,291 at entry level, 112 at level two, 26 at level three, and two at level 4.³⁶³ Accordingly, Woolworths Group is currently achieving an Aboriginal and Torres Strait Islander employment rate of 2.65 per cent in Australia. In the Northern Territory, the rate of Aboriginal and Torres Strait Islander employment is 4.36 per cent.

To support the direct employment initiatives, Woolworths Group provides cultural awareness training for relevant store team members, and pre-employment training for newcomers.³⁶⁴ However, consultations with both proponents and opponents of the Dan Murphy's development provided that Woolworths Group's support of Aboriginal and Torres Strait Islander employees in the Northern Territory has been, in essence, one size fits all. With a Sydney-based employment services partner, there may be a lack of important context to the training provided.

Woolworths Group also provides opportunities for Aboriginal and Torres Strait Islander owned suppliers. It currently maintains fourteen Aboriginal and Torres Strait Islander supply partnerships on a permanent basis across Australia. Further, it has set an ambitious target to increase enterprise spend by 20 per cent year on year over the next three years.³⁶⁵

It is argued by some that corporations, not limited to Woolworths Group, should be able to advance Aboriginal and Torres Strait Islander employment without receiving government funding.³⁶⁶ This is particularly the case when these large corporations generate hundreds of millions, and even billions in profit. Woolworths Group notes that "every cent" goes to its partnership with Diversity Dimensions, to provide pre-employment training and mentoring to Aboriginal and Torres Strait Islander job-seekers, and to help develop retention initiatives. This corresponds to approximately \$7,900 of funding per Aboriginal and Torres Strait Islander job-seeker. Woolworths Group, like other corporations, then contributes the full wage.

There is benefit in Woolworths Group ensuring that there is transparency around funding for employment for Aboriginal and Torres Strait Islander peoples in the Northern Territory, where Woolworths Group has

the opportunity to make a large impact. 30 per cent of the Northern Territory's population is comprised of Aboriginal and Torres Strait Islander peoples. In light of this, the Woolworths Group should aim to ensure that its Aboriginal and Torres Strait Islander employment target is 30 per cent of its Northern Territory personnel.

As Karen Sheldon put forward in consultation with the Panel:

"I have two hats when considering the Dan Murphy's development. As President of the NT Chamber of Commerce, of course I want to see a growing and thriving economy and we welcome new and diverse businesses that provides greater customer choice for Territorians - but there are huge qualifications to my support for this project. Any big business operating in the Territory should engage with and respect its local community and acknowledge local social issues. Woolworths and Dan Murphy's have the opportunity to be good corporate citizens by engaging with and supporting local business organisations, and also local harm minimisation projects through sensitive and tailored marketing rather than through their nationally consistent approach.

Importantly, Woolworths receives millions of dollars of taxpayer funding through the National Indigenous Australians Agency's Employment Parity Initiative to foster Indigenous employment, so there is the opportunity for them to show leadership by delivering locally contextualised and meaningful employment programs in the NT. Their current efforts are not consistent with the demographic of their local customer bases where more than 30 to 50 per cent of their customers are Aboriginal."

- Karen Sheldon AM, President, Chamber of Commerce Northern Territory (11 March 2021)

362 Note: the actual number of Aboriginal and Torres Strait Islander employees may be higher as self-identification is optional

363 House of Representatives (2021), 'Standing Committee on Indigenous Affairs'

364 Woolworths Group (2019), 'Reconciliation Action Plan'

365 Woolworths Group (2019), 'Reconciliation Action Plan'

366 The Guardian (2021), 'Crown among big companies given more than \$90m by government to employ Aboriginal people'

10. WOOLWORTHS GROUP'S COMMITMENT TO AND RELATIONSHIP WITH ABORIGINAL AND TORRES STRAIT ISLANDER AUSTRALIANS

In its RAP, Woolworths Group has noted that there is more work to be done in increasing supplier diversity.³⁶⁷ It is also worth observing that recent procurement figures have been bolstered due to the COVID-19 pandemic, which speaks to Woolworth's Groups ongoing and purposeful engagement with Aboriginal and Torres Strait Islander business providers.

A number of jobs are expected to be created by the introduction of the proposed Dan Murphy's development. These estimates have varied slightly through the years. As it stands, approximately 140 – 160 initial construction jobs, and 35 direct store management and operations jobs could be created. Endeavour and Woolworths Group have both stated that further indirect benefits will also be realised in areas such as transport services, cleaning and security. There is no specific commitment to allocate a proportion of these jobs to Aboriginal and Torres Strait Islander people.

Given Woolworths Group's ability to create substantial opportunities for Aboriginal and Torres Strait Islander peoples in the Northern Territory, the Panel holds the view that the organisation would need to do further work to meet its RAP commitments.

Governance

Woolworths Group has obviously invested considerable thought, time and effort in establishing its RAP governance framework. Woolworths Group has also invested in meaningful engagement as it navigates its reconciliation process and builds trust based on respectful relationships with its Aboriginal and Torres Strait Islander staff, customers and communities more broadly. To this end, Woolworths Group has established a RAP Steering Committee, a RAP Working Group and an External Indigenous Advisory Panel to help support it in meeting its reconciliation aspirations and create opportunities to hear the voices of Aboriginal and Torres Strait Islander peoples. The RAP Steering Committee and RAP Working Group include Aboriginal and Torres Strait Islander peoples and the External Indigenous Advisory Panel includes people who are recognised First Nations leaders.

However, it is clear from the Panel's discussions with both Woolworths Group and external stakeholders that there was minimal, if any, meaningful engagement with the RAP Working Group or External Indigenous Advisory Panel about the proposed Dan Murphy's Darwin development. That is, prior to the end of 2020 when community concerns became more publicly apparent. At this point, the External Indigenous Advisory Panel noted that it was not supportive of the development. Kristal Kinsela and

Adam Goodes, members of the External Indigenous Advisory Panel and trusted First Nations leaders said of Woolworths Group:

"They have borrowed from us for legitimacy, but there is not enough substance behind it. They have missed an opportunity. Woolworths was trying to justify what it was doing with the proposed Dan Murphy's rather than seeking the External [Indigenous] Advisory Group's advice."

- Kristal Kinsela and Adam Goodes, members of the Woolworths Group External Indigenous Advisory Panel (1 March 2021)

The Panel would encourage the greater involvement of Woolworths Group leadership in its RAP. The involvement of Woolworths Group leadership in the development, monitoring and evaluation of its RAP initiatives could be better.

Woolworths Group's Sustainability Report notes that it is committed to remaining an industry leader with managing and mitigating issues relating to responsible drinking, responsible service of alcohol, and the sale and marketing of alcohol. Woolworths Group's declared aim is to go beyond the basic regulatory compliance targets.³⁶⁸ However, the only action specifically mentioned aligning with this vision is that Woolworths Group will continue to be a funding supporter of 'Drinkwise' – a not-for-profit that aims to change the way that Australians consume alcohol. Such a strategy places no accountability on Woolworths Group. Further, there is no indication of this being a priority in its Reconciliation commitments. In the matter of the Dan Murphy's Darwin proposal, there has been a disconnect between the Woolworths Group's commitment to Aboriginal and Torres Strait Islander peoples' empowerment and what actually occurred.

The Collingwood Football Club 'Do Better Report', although in a different context and unrelated to the issues in the Darwin Dan Murphy's development, is instructive of the contradiction between the theory of reconciliation and reconciliation in practice.

367 Woolworths Group (2019), 'Reconciliation Action Plan'

368 Woolworths Group Sustainability Report (2020), 'Committed to a better tomorrow', pg. 72

Collingwood Football Club

The Collingwood Football Club has been linked to a series of high-profile racist incidents, highlighting a distinct gap between what it says it stands for and what it actually does. These incidents speak to systemic racism, where prejudice is so deeply ingrained that the concerted efforts of individuals cannot be translated into club-wide change.

Key criticisms about the Club's failure to address incidents of racism and its structural racism were focused on the absence of clear and trusted avenues through which complaints could be made. The Club was more likely to react to media coverage about a racist incident than internal complaints. Too often the reaction was defensive rather than proactive and this aggravated, rather than mitigated, the impact of that racism on the people who experienced it.

Clearly, it was not enough to have great policies for dealing with racism on paper. These policies needed to be implemented, resourced and applied. Everyone at the Club needed to understand what processes they contain and the values behind them. This was an important strategy in changing the Club's culture, embracing its values, and addressing racism.

There was a firm view that without transparency, accountability and consequence, these policies and procedures will not lead to the shifts the Club needed. Not surprisingly, this observation has come most often from people who had experienced racism within the Club and believed behaviours will not change without a stronger commitment to confronting and penalising those behaviours.³⁶⁹

10.4 Reflections on Woolworths Group's approach to implementing purpose

Ultimately, Woolworths Group's RAP implementation strategy was informed by good intentions but was limited in practice. Certainly in relation to proposals, such as the Dan Murphy's Darwin development, Woolworths Group will need to take a more strategic approach to adopting the values and aspirations espoused in its RAP and using these to guide policies, procedures and responses in a transparent manner.

One potential option could involve the two-way engagement of Aboriginal and Torres Strait Islander experts across all facets of the business, from strategy and retail markets to social responsibility, regulatory and public policy, and risk management. Woolworths Group should include a mechanism to control, evaluate and refine this process of engagement. In this way, Woolworths Group should be able to translate intention into practice, and effect greater change alongside the Aboriginal and Torres Strait Islander communities that it seeks to serve.

Another potential option may be for Woolworths Group to mirror BHP's strategy for operationalising its vision. In addition to the annual report, sustainability report and Reconciliation Action Plan, BHP has an Indigenous Peoples Policy Statement and a global Indigenous Peoples Strategy. BHP also provides a set of good practice guidelines, with each action directly linking to the Indigenous peoples policy statement and Reconciliation Action Plan, and clear details on how to monitor and evaluate progress and ensure strong transparency.³⁷⁰

All parent organisations should bear the responsibility of ensuring that the commitments articulated in head office flow through to subsidiaries, which in most cases will not have separate strategic plans or action items for bringing these commitments to life. In the future, there may be scope for subsidiaries to have their own short to medium-term plans. These plans could follow a similar structure to Reconciliation Action Plans or Sustainability reports and detail the initiatives that a subsidiary is undertaking to further social or governance goals.

It is noted that Woolworths Group is making meaningful changes internally such that it lives up to its commitments on relationships, respect, opportunities and governance. This is to be commended. Firstly, Woolworths Group appointed a new Chief Risk Officer in 2020, which has led to the development of a more established Risk Appetite Statement, in which Brand and Reputation are greatly featured. Secondly, it has created a Group Head of Reputation role and will appoint an external Senior Manager of Reputation. The long-term aim of these roles is to strongly incorporate Reputation into incentive metrics, replacing traditional metrics like sales per square metre. Woolworths Group has also announced a new Chief Sustainability Officer role. Woolworths Group has stated that these new roles and initiatives are to ensure that purpose is at the heart of organisational culture and behaviours, and to ensure that community values are placed, to the fullest extent possible, at the forefront of operational decision-making.

369 Distinguished Professor Larissa Behrendt AO, Professor Lindon Coombes, Lindon Coombes (2021), 'Do Better — Independent review into Collingwood Football Club's responses to Incidents of Racism and Cultural Safety in the Workplace'

370 BHP (2017), 'BHP Billiton Global Indigenous Peoples Strategy'

11

General Observations

Woolworths Group must decide whether or not it should proceed with the Dan Murphy's proposal. This is a difficult decision. On the one hand, the support for a Dan Murphy's in Darwin is strong. And yet, the opposition to a Dan Murphy's encapsulates so much of what confronts the wellbeing of Aboriginal and Torres Strait Islander peoples today. The clear evidence of the effects of over-consumption of alcohol on the wider Northern Territory community informs much of the opposition to the Dan Murphy's proposal.

After considering the issues covered in detail in this report, the Panel has come to the view that Woolworths Group should not proceed with the Dan Murphy's Darwin development. The bases for this recommendation are fundamentally the concerns expressed about the proposal by many stakeholders – most importantly but not only, Aboriginal and Torres Strait Islander communities – and the negative impact on Woolworths Group and its reputation.

As mentioned elsewhere in this report, the Panel notes that establishing this Independent Panel Review must be looked on as part of the ongoing and evolving thinking of Woolworths Group as it grapples with the complexity and characteristics of this particular Dan Murphy's development. Some might say it has done too little of this to date. Nonetheless, this step by Woolworths Group is both unusual and highly commendable.

In commissioning this Review, Woolworths Group's leadership team has demonstrated a keen awareness of the complex issues to be grappled with ahead of the final decision on the proposal. That consideration includes the outcomes of the extensive consultation process the Panel undertook. The review process was conducted independently of Woolworths Group, but necessarily required a significant investment and commitment from the company. The co-operation of the company and its representatives underscores its commitment to be the leading provider of alcohol in the market and its aspirations of outstanding corporate citizenship.

The Panel has not made any specific recommendations as to what the Woolworths Group should do in the event that the Company decides to proceed with the Darwin Dan Murphy's proposal. It is sufficient to say that, to meet the standards articulated in this Report and the aspirations of the Woolworths Group, this will be a difficult task. At a minimum, Woolworths Group would have to make a very significant effort in relation to many of the recommendations in Chapter 12, including a very material contribution to assisting the Darwin and Northern Territory communities to better deal with the unsafe consumption of alcohol.

Background

Maybe it is with the benefit of hindsight, but the Panel considers that the matters discussed below should have been in the minds of Woolworths Group's and Endeavour's senior executives before any consideration was given to establishing a Dan Murphy's development in Darwin.

There are elevated expectations on corporations such as Woolworths Group to understand and support Aboriginal and Torres Strait Islander communities. The time has long since passed when Aboriginal and Torres Strait Islander peoples may have had no choice but to accept that degradation and disadvantage are a normative condition of their lived experiences and status in Australia. Given its more than 50 years of operation in the Northern Territory, its national footprint and its significance to broader society, Woolworths Group should have factored these issues into every aspect of its thinking in relation to the Darwin Dan Murphy's proposal. That is not to suggest that the problems with excessive alcohol consumption in the Northern Territory are in any way the sole responsibility of Woolworths Group. Responsibility also lies with other providers and as mentioned elsewhere in this report, with the Commonwealth and Northern Territory Governments.

Woolworths Group was, at all times, mindful of the opportunity for a successful Dan Murphy's development in Darwin. The company was well informed that Darwin is seeking to build a more self-sustaining economy and an attractive city with many of the normal services and infrastructure that will attract capital, businesses and tourists, and encourage people to move there from other parts of Australia and become permanent residents.

But Woolworths Group did not engage with the less palatable fact that, in comparative terms, Aboriginal and Torres Strait Islander communities in the Northern Territory face many challenges. These communities suffer from severe overcrowding, over-representation in the criminal justice system, high levels of violence and youth suicide, and a lack of meaningful employment opportunities. Along with cultural imperatives, these issues encourage greater First Nations population mobility into Darwin, with all the attendant resulting challenges. In short, Woolworths Group failed to understand the size and nature of Aboriginal and Torres Strait Islander communities in Darwin.

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It failed to give sufficient reflective consideration to First Nations people of Darwin and the Northern Territory with respect to their socio-economic status, their histories and their struggles to overcome disempowerment and disadvantage. More fundamentally, it failed to sufficiently understand that many Aboriginal and Torres Strait Islander peoples view alcohol as nothing short of a demon that leaves destruction in its wake. Considered in that light, Woolworths Group would have better understood how Aboriginal and Torres Strait Islander communities might see and reject further displays of power and intrusion that are alien to their progression and emblematic of their continued entrenched disadvantage.

“Alcohol is devastating our people. It is really sad for us. It breaks our hearts... I am in my 65th year and have seen first-hand the devastation, the grief that alcohol has and the effect on my people with nothing left to the imagination. To make alcohol even more accessible and offered at a reduced price makes me wonder about the impact on the services, the communities, the businesses, the citizens, the health system, the police, the courts, and Indigenous families, children, men, women, and the effects of poverty, hunger...”

- Bill Risk, speaking independently as a Senior Larrakia Elder. Former and current member of a number of Indigenous boards and committees, including Larrakia Nation Aboriginal Corporation (10 March 2021)

In these respects, Woolworths Group failed to adequately consider the issues of social value and legitimacy in the eyes of First Nations peoples. Had it done so, it would have understood how a Dan Murphy’s – symbolic as it is of the success and attractiveness of alcohol for the majority – might be seen as another nail in the coffin of Aboriginal and Torres Strait Islander peoples distressed and dying from alcohol abuse. The company then might have understood that Aboriginal and Torres Strait Islander peoples are uninterested in so called rational justifications for a Dan Murphy’s. Seemingly rational, business-focused justifications informed the Dan Murphy’s proposal from the outset. This issue of legitimacy was never expressed more powerfully than by the mothers and grandmothers, the Elders, of the Bagot community who said, “we do not want it and we don’t need it – when will they understand that enough is enough”. And there is often a truth that lies beyond so called rational thinking, and that is what the Panel heard.

Woolworths Group also failed to fully observe and comprehend all of the efforts made by the Northern Territory Government, Darwin City Council, the Northern Territory Police, First Nations’ support groups and health organisations to deal with the impact of excessive alcohol on the community, including dysfunction in homes, communities and on the streets of Darwin – not to mention the ongoing harm to the health of the population as a whole.

There should be no mistake - it is the Northern Territory’s history and particular circumstances that have led to the extraordinarily high levels of alcohol abuse. And as earlier noted, the problems with excessive alcohol consumption are not through any fault or flaw of the First Nations peoples of the Northern Territory. The scale and dimensions of the problems with alcohol across the whole community in the Northern Territory present as some of the most serious and urgent problems still to be resolved by governments and the liquor industry. As with many aspects of neglect and disadvantage experienced daily by Aboriginal and Torres Strait Islander peoples, the focus cannot be on alcohol alone. But addressing the problems caused by alcohol is fundamental, and this is an area in which Woolworths Group can play a role. That said, this must remain primarily the responsibility of the Commonwealth and Northern Territory Governments.

11.1 Decision-making

Two closely related but separate themes gave an essential quality to the decision-making processes and governance of the Dan Murphy’s proposal.

- **Governance aspects:** The governance theme emerged strongly in 2020, particularly in the second half of the year. Before that point, it was largely absent and largely limited to operational and legal issues. It seems to the Panel that there was an issue about whether it was truly appropriate for Woolworths Group, as the parent corporation, to proceed with the Dan Murphy’s proposal. This theme was given considerable attention by Woolworths Group’s Chairman, Gordon Cairns, Managing Director and Chief Executive Officer Brad Banducci and the Board of Directors before the Director of Liquor Licensing approved the substitution licence on 17 December 2020.
- **Operational aspects:** The dominant, if not exclusively considered, theme revolved around operational aspects. From 2016 until late 2020, the operational aspects of securing the requisite liquor approvals to construct the Darwin Dan Murphy’s development were pervasive. Understandably, these operational matters were largely left to the executives of Endeavour.

11.2 Governance aspects

It seems to the Panel that Woolworths Group did not properly consider the decision to establish the Darwin Dan Murphy's development against its own aspirations as a leading corporate citizen. The company did not have in place the necessary systems, structures and personnel within the organisation to fully consider the issues highlighted in this report in relation to engagement with Aboriginal and Torres Strait Islander communities on the significance of alcohol in the community and the complexities surrounding alcohol abuse. Accordingly, it had limited capacity to test compliance with its purpose and aspirations as a leading corporate citizen against the Dan Murphy's proposal.

Many stakeholders the Panel consulted said there was insufficient engagement between Woolworths Group the parent company, as the ultimate decision maker, and Aboriginal and Torres Strait Islander communities in any general sense, to build the requisite legitimacy and trust. This reinforced Aboriginal and Torres Strait Islander peoples' ongoing experience of the dominant culture invariably getting its way. In this case, it was represented by Endeavour's seemingly single-minded determination, after the Liquor Commission rejected Woolworths Group's application, to gain approval for the Dan Murphy's development regardless of the opposition of many Aboriginal and Torres Strait Islander people and the organisations that support them.

It emerged from the Panel's review of Woolworths Group's internal documents and the Panel's discussions with Woolworths' Board and senior executives that more comprehensive reporting and deliberate consideration of the matters raised in this report should have variously occurred, as part of the overall Dan Murphy's Darwin process. Additionally, senior executives and the Board should have considered the role of reputation as a distinct construct from that of brand, at much earlier points than they did.

Mr Banducci and the Board made a radical shift in the second half of 2020 when they came to consider these matters as well as the very significant reputational issues that flowed from them. That is best expressed by the decision to appoint this Panel, and what has occurred since.

In his address to the Australian Institute of Company Directors' Governance Summit in March 2021, Mr Cairns further articulated the company's new focus around purpose and culture. More recently, the company has announced:

- the creation of a Group Head of Reputation and the establishment of the required architecture within the company to better manage reputation;
- the appointment of a new Chief Risk Officer in 2020, which has led to the development of a more

prescriptive Risk Appetite Statement in which reputation and brand are more purposefully included; and

- the appointment of a Chief Sustainability Officer to increase the focus on sustainability issues across all company activities and operations.

These signify positive developments and create structures for Woolworths Group to align with and meet as far as possible the expectations the company has for itself, as well as the expectations of its broader stakeholder group. However, some clear deficiencies relating to the Darwin Dan Murphy's proposal emerged during the Panel's work.

11.3 Operational aspects

The operational aspects by and large followed the usual processes involved in securing the relevant site and liquor licence approvals. Those processes were largely unremarkable in and of themselves. That said, some important issues could and should have received more thought and attention at the most senior levels of the company, given the social construct and problems associated with alcohol in Darwin and the Northern Territory. Those issues are:

- The failure to fully and deeply engage with the issue of the dangerous impact that alcohol has on the health and wellbeing of Aboriginal and Torres Strait Islander peoples and to involve them in any considered engagement of that issue. For example, there does not appear to have been any corporate consideration of the Riley Review and the very important matters it raised.
- The failure from the outset to identify, engage with and listen to the broad range of stakeholders concerned with the impact of a Dan Murphy's development on Aboriginal and Torres Strait Islander peoples of Darwin and the inadequate consultation processes that were employed. Endeavour took the view that it was a better provider of alcohol products in the market than other providers because it employed leading harm minimisation procedures, particularly at the point of sale, and applied standards over and above those imposed by regulation.
- The failure to consider the impact of the hearing before the Liquor Commission on the various stakeholders who provide health and welfare services to Aboriginal and Torres Strait Islander communities. The application by Woolworths Group was conducted in the usual adversarial manner, which included submissions to the Liquor Commission to reject or give little weight to aspects of the evidence put forward by these opponents, including from several acknowledged research experts. While

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the views of these experts may not be limited to the Darwin communities, nonetheless their views as expressed to the Panel were that Woolworths Group ignored or dismissed the importance of their knowledge and the services they provide to mitigate and treat the impacts of alcohol. They saw the subsequent attempts by Woolworths Group to avoid or overturn that decision as an arrogant determination to impose its will on their communities. This further entrenched their objections, if not hostility, to this proposal. That made any engagement with them in 2020 difficult, if not impossible, and caused much of the public opposition and antagonism towards the Dan Murphy's proposal.

- The nature of the engagement by executives of Endeavour with the regulatory and parliamentary authorities of the Northern Territory. While it may be speculative to say so, that engagement may be said to have contributed to the unsatisfactory legislative amendments to the liquor regime in November 2020 and the Director of Liquor Licensing's Decision Notice of 17 December 2020. Indeed, many of the stakeholders who spoke to the Panel saw these outcomes as not only highly questionable, but a direct result of the efforts and influence of Woolworths Group on the Northern Territory Government.

In all of the above, Woolworths Group and Endeavour were captured by the brand self-belief of an outstanding provider operating over and above regulatory requirements and the standards of other operators. That view seemed to get in the way of and possibly trumped a broader consideration of other pressing issues. In the Panel's view, in so doing the company failed to properly consider how it might have thought about the perceived, if not actual, impact of a Dan Murphy's on Aboriginal and Torres Strait Islander communities. Consequently, the reputation of Woolworths Group was not properly considered in this context.

12

Findings and Recommendations

The Panel wishes it to be noted that the views of stakeholders and others represented in this report are not necessarily the views of the Panel in every instance. The Panel also wishes it to be understood that it is not at all opposed to the alcohol industry in the Northern Territory or elsewhere in Australia. Rather, the report highlights the very real problems associated with alcohol in Darwin and the Northern Territory.

This chapter then outlines the nine key findings and related recommendations from the Panel's work. The Panel acknowledges that community expectations have been evolving rapidly in these areas and that notions of corporate best practice have changed since the Darwin Dan Murphy's development commenced five years ago. While this report has critically discussed Woolworths Group's approach to the Darwin Dan Murphy's proposal, the focus of these recommendations is to constitute a forward-looking high watermark for corporate engagement with First Nations peoples. Each finding includes a discussion about how problems may have been avoided or better dealt with, and about the lessons that emerged. Some of the recommendations overlap with others and the Panel notes that social value, legitimacy and trust are pervasive themes across all nine key findings and recommendations. Legitimacy and trust are essential ingredients for any leading corporate citizen to have meaningful relationships with their customers, staff and the communities in which they operate.

The Panel recommends that, within the next five years, Woolworths Group commission an independent assessment to review progress in implementing this report's recommendations, including actions taken to operationalise the principles and practices variously referred to in this report and in this report more generally.

In the event Endeavour demerges from Woolworths Group, the Endeavour Board should also carefully consider the matters in this chapter and in this report more generally.

12.1 Community investment and reconciliation

It is well recognised that Woolworths Group, across all of its business operations, provides significant value to Australia. However, there are opportunities for Woolworths Group to enhance its investment in the diverse communities that make up Darwin, and in Aboriginal and Torres Strait Islander communities across Australia.

Woolworths Group's reputation as a food and groceries supplier is strong, but in the minds of the people who opposed the Dan Murphy's development, the necessary elements for it to demonstrate leading or outstanding corporate citizenship were not as present as they should have been. Had the issues raised by those opposed

to the development been given mature and thoughtful consideration, the whole consultation would have been differently conceived and executed. The socio-economic situation of Aboriginal and Torres Strait Islander peoples ought to have framed and informed how Woolworths Group thought about a Dan Murphy's development from the outset. More fundamentally, the company did not sufficiently explore and failed to understand how Aboriginal and Torres Strait Islander peoples view alcohol and the alcohol industry. As one of the Bagot community Elders said to the Panel: "Why does Woolworths want to be a part of the problem?"

A contributing factor to this challenge of legitimacy relates to the resistance or reluctance of some Aboriginal and Torres Strait Islander groups to talk to Woolworths Group or Endeavour representatives. This reluctance was exacerbated and reinforced by a corresponding lack of depth or sophistication in Woolworths Group's capability to engage with Aboriginal and Torres Strait Islander peoples despite the corporate commitment outlined earlier in this report.

There are organisational and governance structures within the Woolworths Group to facilitate reconciliation action planning. But these structures have not been used effectively. Members of Woolworths Group's External Indigenous Advisory Panel told the Panel that the ways in which they were engaged in relation to the Dan Murphy's proposal were inadequate. Any engagement that did take place in relation to this development was instigated by them rather than the company. Overall, there was a lack of depth and consistency in the company's commitment to its Reconciliation Action Plan, as reflected across all of the relevant activities relating to the Dan Murphy's development. This is despite the significant and sincere corporate commitment of the company, as set out earlier in the report, the total number of Aboriginal and Torres Strait Islander peoples it employs, and its commitments to support First Nations businesses in its supply chain.

Woolworths Group and Endeavour have a long-standing presence in Darwin and the Northern Territory. Woolworths Group's support of community organisations across the Northern Territory and BWS' support of Mission Australia, as noted earlier, are to be commended. However, Woolworths Group and the communities in which it operates would both benefit from a more strategic and cohesive approach to community investment, underpinned by a greater investment that reflects its business operations in the Northern Territory. The Panel also notes that Woolworths Group would benefit from better communicating its current community investment and the impact of that investment.

There are significant conflicts between, on the one hand, corporate goals related to community wellbeing and, on the other, Woolworths Group's programs within the community that promote alcohol consumption, under the

guise of community club sponsorships and rebates. The Panel believes that Woolworths Group should reconsider the focus of programs which seem to be based on reward incentives for people to drink more in community sporting clubs.

The Panel believes stronger community investment and strengthened reconciliation action planning would help build greater levels of trust and strengthen Woolworths Group's ties to the communities in which it operates. That will generate a greater understanding of those communities and their needs, with mutually beneficial outcomes.

Recommendations

- **12.1.1:** That Woolworths Group deeply and reflectively considers the issues of social value, legitimacy and trust as the centrepiece of its approach to engaging with Aboriginal and Torres Strait Islander communities and the stakeholders working with them.
- **12.1.2:** That Woolworths Group leaders are more closely involved in building relationships with Aboriginal and Torres Strait Islander leaders and communities across Australia, and their performance is measured against the community benefits flowing from those relationships.
- **12.1.3:** That Woolworths Group investigates ways to extend and embed its commitments in relation to reconciliation with Aboriginal and Torres Strait Islander peoples within each of its primary business functions through business-level strategic plans that feed into the Woolworths Group Reconciliation Action Plan.
- **12.1.4:** That Woolworths Group gives priority to the voices of Aboriginal and Torres Strait Islander Australians in every aspect of its business engagement with First Nations communities. This must include redesigning processes and structures within the company to ensure that it includes its own Aboriginal and Torres Strait Islander personnel as well as a material number of external First Nations advisers as dominant participants.
- **12.1.5:** That Woolworths Group develops company-wide competencies and guidance around reconciliation and community engagement, particularly engagement with Aboriginal and Torres Strait Islander communities, supported by an investment in enabling technology and training to facilitate this engagement.
- **12.1.6:** That Woolworths Group investigates sustainable needs-based methods to further invest in communities across the Northern Territory and strengthen its community investment metrics across all leadership roles.

12.2 Engagement and consultation

While there was and remains support for a Dan Murphy's development among the public and business community in Darwin, the proposed development failed to garner the support of a broader cohort of stakeholders. The failure to obtain that support was informed by both the absence of an embedded relationship between Woolworths Group and the Aboriginal and Torres Strait Islander peoples of Darwin and the Northern Territory, and the very consultation process itself. As one Darwin stakeholder put to the Panel, when the company looked to the community for support for the Dan Murphy's proposal, "it had no credit in the bank!"

Woolworths Group misread its position in Darwin and the Northern Territory, thinking it was a trusted actor with strong relationships with Aboriginal and Torres Strait Islander communities. Rather, its reputation was negative to neutral. Many of the Aboriginal and Torres Strait Islander people and wider community members to whom the Panel spoke questioned the legitimacy of Woolworths Group in making any claim that would justify the development of an additional liquor outlet, let alone one of the size and significance of a Dan Murphy's. Several opponents said the proposal was nothing more than the company pursuing its financial objectives to sell more alcohol in a community where alcohol consumption was already the cause of untold misery and destruction, particularly to the lives and wellbeing of too many Aboriginal and Torres Strait Islander peoples.

In the context of the above observations, it would have been difficult for Woolworths Group to design any consultation process that might have led to First Nations support for a Dan Murphy's development. But it may not have been impossible. To succeed, that process should not have commenced before the company had demonstrated some level of legitimacy, as previously discussed, so that opponents could believe it could be trusted to do the right thing. This would have entailed deep and thoughtful engagement with these people well in advance of any decision to construct a Dan Murphy's development in Darwin. It would have entailed building a trusted relationship with the relevant communities and the Aboriginal and Torres Strait Islander peoples of Darwin more generally. It would have required a negotiation between Woolworths Group and these communities and the organisations that support them as to how the company might assist them in their efforts to improve the lives and wellbeing of Aboriginal and Torres Strait Islander communities regarding the safe consumption of alcohol. These issues may be thought of as prerequisites to any consultation process where the aim was to secure their support for the development of a substantial liquor outlet. The process involved in achieving these outcomes would have been time-consuming and difficult. Nonetheless, a respectful

relationship might have been built with meaningful efforts before any request for their support.

Recommendations

- **12.2.1:** That before making any business decision that may particularly impact Aboriginal and Torres Strait Islander peoples, Woolworths Group engages with the relevant groups at a very early point, and after having taken advice from leading community members as to how that engagement should be framed and developed.
- **12.2.2:** That Woolworths Group takes a more inclusive approach to identify, engage and listen to a wider range of stakeholders concerned with the impacts of new proposals – particularly, but not necessarily exclusively, when it comes to the sale of alcohol in communities with a strong First Nations presence. In this respect, the Panel recommends that Woolworths Group takes steps to provide multiple direct and indirect channels for stakeholder engagement.
- **12.2.3:** That Woolworths Group reframes its consultation approach with First Nations peoples in remote areas. To this end, Woolworths Group should review its resources to ensure that it has the relationships, skills, competencies and knowledge, aligned to its purpose and values, to produce desired outcomes.

12.3 Considering harm in operational decision-making

It is clear that in the site selection process, commercial considerations took precedence over any deeper considerations of public interest and the perceptions and fears of harm arising from the store. Where demographic analysis was considered, it was only as an input into assessing the economic potential of the site. It is true that at-risk groups were considered at the site nomination stage, but these groups were assessed in a limited way that reinforced Endeavour's view that any harms from the project would be minimal. This approach obscured a more sophisticated understanding of the risks, at least as perceived by many people in the community, even if those risks were not accepted or agreed by Endeavour.

The social context around the store was also not adequately considered. While not seemingly relevant to the commercial decision at hand, an awareness of this context may have helped Woolworths Group identify community concerns earlier, work to address those concerns, and avoid any reputational or broader brand risk. For example, it is well known in Darwin's Aboriginal and Torres Strait Islander communities that Bagot Road has been the site of alcohol-related pedestrian deaths, with several residents of the surrounding Aboriginal and Torres Strait Islander communities killed or seriously

injured in traffic accidents. Additionally, the proposed Bagot Road location is embroiled in the legacy of intergenerational trauma that affects a significant number of Aboriginal and Torres Strait Islander people and their descendants.

Ignorance of these factors created the perception of insensitivity to the history and current reality of the Aboriginal and Torres Strait Islander population of the area, especially as it relates to alcohol. This is a cost that continues to disproportionately burden Aboriginal and Torres Strait Islander communities, not to mention the imposts on the Australian taxpayer.

Recommendations

- **12.3.1:** That Woolworths Group revises its operational decision-making processes in relation to future liquor outlet proposals to explicitly consider the social and health impacts on the at-risk groups and vulnerable communities such as First Nations peoples before progressing any such new proposals.
- **12.3.2:** In the context of the above, that Woolworths Group establishes a system within its senior executive structure to regularly review community engagement and impacts, particularly recognising its ongoing investment in building trusted relationships and working with Aboriginal and Torres Strait Islander customers, staff and communities.

12.4 Engagement with harms beyond responsible service

Endeavour personnel interviewed by the Panel believe there is a weak or non-existent relationship between the density of licensed liquor retail outlets, including large liquor stores of the dimension of a Dan Murphy's, and alcohol-related harms. Numerous public health researchers, health service providers, clinicians and advocates vigorously contest these claims. The Panel also interviewed Superintendent Antony Deutrom, who spoke powerfully about the impact of the excessive consumption of alcohol on the Darwin community generally, but particularly on Aboriginal and Torres Strait Islander communities and their families, especially their children.

It is clear the relationship between alcohol outlets and harm is not straightforward. However, the fundamental differences between Endeavour and public health researchers and advocates stems from Endeavour's narrower views on the mitigation of alcohol-related harms. Endeavour sees these harms as being mitigated primarily through innovations at the point of sale, as well as other safety and traffic measures around the proposed development. Several Endeavour personnel interviewed by the Panel noted that a Dan Murphy's development would embody best practice in the sale of alcohol, and

that a possible outcome of Endeavour's higher standards of customer service and responsibility could be a reduction in trade for less reputable competitors making them unviable in the long-term, thereby reducing the level of harm to the community overall.

Public health researchers and advocates interviewed by the Panel take a much more expansive view of alcohol-related harms as a society-wide public health issue, rather than an issue to be mitigated at the point of sale. Instead of a singular focus on responsible service protocols and store safety measures, alcohol-related harms require greater investment in public policy measures across society. This view was reinforced by numerous people interviewed by the Panel.

Given the substantial body of evidence provided by public health researchers, the relationship between alcohol and harm should be given greater weight and considered not just in the context of the point of sale and store safety measures, but across all operational and business cycles.

Recommendations

- **12.4.1:** That Woolworths Group incorporates into its strategies and business analysis frameworks a more comprehensive account of social and community impacts beyond the point of sale and throughout all stages of the business life cycle. This should include ongoing engagement with and listening to health experts and considering how the alcohol industry and health experts can better work together.
- **12.4.2:** That Woolworths Group proactively considers its approach to engaging with Aboriginal and Torres Strait Islander communities and relevant health and other experts to find out how it can make a meaningful and sustained contribution to ameliorating the dangerous and harmful impacts of excessive alcohol consumption by Aboriginal and Torres Strait Islander peoples, especially in the Northern Territory and across northern Australia more broadly. Woolworths Group has an opportunity to take a thought leadership role here.

12.5 More alcohol in the community

The Panel considered the evidence presented to the Liquor Commission on the impact of an outlet such as a Dan Murphy's. Endeavour provided sales forecasts generated by an independent economic consultancy it had contracted. Endeavour used the independent economic consultancy's analysis to model sales for a new store. The sales forecast illustrated that there would be limited market growth due to the cannibalisation of existing Endeavour sales, and redirected sales from its competitors.

These sales projections were at odds with what many community organisations expected or intuited from the

Dan Murphy's marketing and business model. They noted that an iconic brand with a high-volume sales model and a lowest price guarantee would increase the overall volume of liquor sales in Darwin, and would therefore lead to an increase in the consumption of alcohol across the board.

The Panel sought further data from Woolworths Group to test Endeavour's claims but has not been able to independently verify either the model relied on by Woolworths Group or the opposing claims presented by community groups. The Panel is therefore unable to make an objective assessment of whether a Dan Murphy's development would increase the overall level of sales or the volume of liquor consumed in the Greater Darwin area and beyond. It is important to note, however, that Endeavour informed the Panel that Dan Murphy's has a lower proportion of sales from cheap alcohol (including ready-to-drink products, cheaper wines and cask wines) relative to its competitors and relies on premium alcohol sales to generate a significant proportion of its profit.

At present, despite its national footprint, Woolworths Group's contribution to the evidence on alcohol sales, impacts and harms, and the relationship between availability and volume, relates primarily to applications for new developments. There is a case that as an 'above and beyond' provider Woolworths Group should support robust, long-term public research on issues of availability, volume and impacts of alcohol, and understanding the effect of interventions and mitigation, to build an evidence base for best practice and performance measurement.

Recommendation

- **12.5.1:** That Woolworths Group takes steps to improve the overall understanding and evidence base of the implications of alcohol sales and take a leadership role in supporting research to answer the question of whether new liquor outlets such as Dan Murphy's increase the volume of alcohol consumption in the community.

12.6 Governance and risk

Woolworths Group has identified that its approach to risk has changed in recent times. As noted earlier in this chapter, that has involved the appointment of a Chief Risk Officer and the introduction of an expanded Risk Appetite Statement.

The Panel considered the nature of the risk assessments carried out by Woolworths Group and Endeavour in considering this sensitive and contested development. Risk assessments identified challenges to the commercial and operational aspects of the development, such as responsible service, rather than more fundamental risks to the communities in Darwin, particularly Aboriginal and Torres Strait Islander

communities, that would have a flow-on effect on the Woolworths Group brand and reputation.

This lack of an adequate risk assessment system, across actual or perceived risks to communities, informed and negatively affected the relevant governance mechanisms within Woolworths Group. Stakeholders' concerns about the Darwin Dan Murphy's development were inadequately reported to the Board's Sustainability Committee. These issues were therefore not properly considered by the Board until the first half of 2020, some years after the original application was made. From 2017 to 2019, there was some reporting to the Woolworths Group Board, focusing on the legal processes and efforts by Endeavour to engage with the Northern Territory Government and garner public support for the development. There was also a considerable lack of engagement with the Group's sustainability leadership which led to a disconnect between the company's sustainability strategy and the actions of the business. It seems to the Panel that the corporate culture was one that did not explicitly invite, encourage or support the vigorous and contested debate of strategies and proposals in a manifestly controversial context.

As Woolworths Group builds out its risk function, there will be some benefit in incorporating social impact and reputational analyses into its risk assessments and statements, as well as creating escalation triggers where a development may have a disproportionate impact on First Nations communities.

Recommendations

- **12.6.1:** That Woolworths Group's internal risk processes be enhanced to identify company activities and community-sensitive proposals that should be given Board consideration. This includes proposals that have the potential to affect vulnerable communities such as Aboriginal and Torres Strait Islander peoples.
- **12.6.2:** That Woolworths Group considers further developing internal structures and processes that encourage greater diversity of thought internally.
- **12.6.3:** That Woolworths Group increases the number of decision gates for controversial developments. These specific additional decision gates could be as simple as structures that require executive discussion of presentations from various internal sources.
- **12.6.4:** That Woolworths Group reviews the point at which its reputation and sustainability leaders become involved in any controversial proposals.

- **12.6.5:** That Woolworths Group establishes key performance indicators for its new senior risk, reputation and sustainability roles, focused on developing the company's capabilities in engaging with Aboriginal and Torres Strait Islander peoples, staff and communities.

12.7 Commitment to responsible service measures

As part of the Darwin Dan Murphy's development proposal, Endeavour committed to a number of responsible service measures above what was required at law, or indeed what it had in place at other outlets in Darwin, other parts of the Northern Territory and across Australia. Commitments to these measures were made in response to Endeavour's early but limited understanding of the sensitivities and complexities of the Darwin community, and to feedback received during the community consultation process.

On the responsible service of alcohol, Endeavour committed to implement a number of measures in response to stakeholder feedback. These included introducing controls for liquor purchases over set threshold quantities; partnering with Local Liquor Accords; implementation of minimum unit prices above the legislated minimum; recording the identification details of people making large purchases over a volume threshold; requiring responsible service of alcohol certification and regular refresher training for staff, as well as a Banned Drinker Register and cultural awareness training; and undertaking responsible marketing, in line with community standards and the Alcohol Beverages Advertising Code Scheme.

Endeavour also committed to numerous store security measures above and beyond regulatory requirements. These included installing high-definition CCTV cameras in-store, with facial recognition; installing CCTV in external areas surrounding the store; using Crime Prevention Through Environmental Design principles in the store design; engaging onsite security personnel and police auxiliary liquor inspectors during trading hours; and having random security patrol vehicles monitoring premises and surrounds.

While recognising that these measures were focused on addressing the mitigation of harms at the point of sale and in the immediate surrounds, they were nonetheless welcomed by stakeholders and could be considered in other high-risk contexts in the Northern Territory and elsewhere in Australia.

Recommendations

- **12.7.1:** That Woolworths Group continues to invest in and set the industry standards and proactively engages with regulators, independent experts, industry partners and community groups to demonstrate its commitment to operating measures that are above and beyond minimum regulatory requirements, and the standards and processes of competitor outlets.
- **12.7.2:** That Woolworths Group undertakes a review to ensure that its outlets have the structure, systems and procedures in place consistent with its objective as an outstanding corporate citizen to identify opportunities for improvement and innovation.

12.8 Engagement with legal process, government and relevant regulators

As discussed in this report, the close engagement of corporations with government in respect of proposed legislative and regulatory amendments that affect their interests is a longstanding and fairly common feature of the democratic system. Such conduct is useful and perhaps essential in a democracy. However, it can distort fairness and the processes of the legislature, as may be said to have occurred in this matter.

Many in the Darwin community took the view that Woolworths Group exercised undue influence in encouraging the Northern Territory Government to abandon, if not usurp, the important public policy considerations formulated by the Riley Review. To the credit of the Northern Territory Government, the bulk of the Riley Review recommendations were subsequently included in the legal and regulatory regime of the Northern Territory. Regrettably and in stark contrast, the design and passage of the Northern Territory Government's subsequent amendments to the *Liquor Act 2019* in November 2020 provided the unsatisfactory legislative framework for the decision of the Director of Liquor Licensing to approve Woolworths Group's application for the Dan Murphy's Darwin development, and three other historical applications.

This unfortunate aspect of the process to obtain the relevant approval should not sit comfortably with the company's purpose and its aspirations to be a leading corporate citizen. It is noted that the Woolworths Group Managing Director and Chief Executive Officer and Board were not adequately brought into or involved in the nature of the engagement with the Northern Territory Government.

In relation to the manner in which Woolworths Group conducted its application before the Liquor Commission in 2019, it did not seem to consider the impact on

stakeholder opponents in the community or among health experts. Had it done so, the large divide that exists today between Woolworths Group and many people in the Aboriginal and Torres Strait Islander communities and in the health and services sector may not be as seemingly intractable.

A corporation like Woolworths Group will always be highly conscious of supporting the rule of law. It should also be highly conscious of the public policy objectives that underpin the regulatory and legal frameworks within which it operates.

The Panel wishes it to be noted that, in all of the above, there is no suggestion that Woolworths Group or Endeavour acted in any way that was unlawful.

Recommendations

- **12.8.1:** That Woolworths Group reviews how it approaches and engages with government in matters that have the potential to call into question its social value, purpose, legitimacy and community trust, and that it puts in place structures to monitor, review and report on government engagement where there is the potential to damage its social value, legitimacy and trust in the eyes of the community.
- **12.8.2:** That Woolworths Group reviews how it approaches and engages with legal processes and regulatory policy in the context of its social value, purpose and aspirations to be a leading corporate citizen, and that it puts in place structures to monitor, review and report on legal processes and policy developments where outcomes have the potential to damage its legitimacy and trust in the eyes of the community.

12.9 Purpose and corporate responsibility

As purpose emerges as a defining call to action for modern corporations and business leaders, the way in which purpose is operationalised will become increasingly scrutinised. Woolworths Group has articulated a corporate purpose with an objective to be an outstanding corporate citizen. But turning purpose into principles and practices throughout an organisation is a complex task. Woolworths Group has embarked on this and, as the Panel noted earlier, has made important initial investments in this area.

In considering the Darwin Dan Murphy's development it is clear that the focus of Endeavour in particular was to take the necessary steps to clear the hurdles for the development. This approach focussed on ticking all the necessary boxes without sufficient regard for the overall purpose or principles of the business. This approach was typified by the fact that Endeavour wrote to a range of stakeholders about its plans and considered that to be the

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first step to consultation, even though on reflection some executives have accepted that this was inadequate.

Operationalising corporate purpose and embedding it throughout an organisation requires significant investment and patience. Above all, it requires an ongoing commitment to take the necessary steps, from articulating a framework to establishing the architecture, building an organisational capability and culture, strengthening risk management, enhancing stakeholder engagement, and measuring and evaluating performance.

Recommendation

- **12.9.1:** That Woolworths Group continues to invest in and consider ways to implement its social value and purpose through principles and practices underpinned by proactive engagement, elevated responsibility and enhanced accountability.

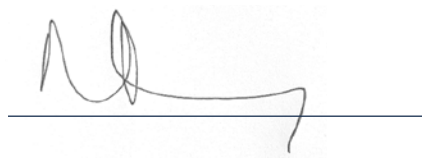
The Panel commends this report to the Board of Directors of Woolworths Group Limited
Wednesday 28 April 2021



Danny Gilbert AM, Chair



Heather D'Antoine



Neil Westbury PSM



Nigel Browne



Roland Houareau

Appendix A - List of Stakeholders Consulted

This appendix provides a list of stakeholders whom the Panel consulted, in-person and/or through written responses. This list does not include those stakeholders who were invited to participate but declined or did not respond. A number of stakeholders whom the Panel met with did not wish to be named in the report.

Organisation	Name	Position
Aboriginal Medical Services Alliance Northern Territory (AMSANT)	John Paterson	CEO
Airport Development Group	Ian Kew	Former CEO of Northern Territory Airports
	Ross Baynes	Director of Property & Operations, Northern Territory Airports
	Tony Edmondstone	CEO
Association of Alcohol and other Drug Agencies (AADANT)	Peter Burnheim	Executive Officer
Australian Council of Superannuation Investors	Claire Molinari	Manager, Research
	Edward John	Executive Manager, Governance & Engagement
	Ian McIlwraith	Manager, Engagement Implementation & Reporting
	Nick Tranotis	Senior Analyst
	Romy Faulkner	ESG Policy and Advocacy Analyst
Australian Human Rights Commission	June Oscar AO	Aboriginal and Torres Strait Islander Commissioner
Australian Indigenous Doctors Association	Monica Barolits-McCabe	CEO
	Dr Simone Raye	Vice President
Australian Medical Association NT	Dr Robert Parker	President
Australian National University	Professor Peter Yu	Vice President, First Nations
Aware Super	Amy Krizanovic	Senior Analyst, Responsible Investment
Bagot Advisory Group	Helen Fejo-Frith	President
Bagot community	Approximately 10 community members	
Cape York Land Council	Richard Ah Mat	Chairperson (Note: Mr Ah Mat is also Co-Chair of the Cape York Partnership)
Cape York Partnership	Noel Pearson	Founder
	Fiona Jose	CEO
CatholicCare NT	Jayne Lloyd	Director (Note: Ms Lloyd is also the President of NTCOSS)

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Organisation	Name	Position
Central Australian Aboriginal Congress	Donna Ah Chee	CEO
	Dr John Boffa	Chief Medical Officer Public Health
City of Darwin	Elly Bugg	Program Coordinator, Darwin Safer City
	Robin Knox	Alderman, Chan Ward
Construction and Building Unions Superannuation (Cbus)	Kim Martina	Senior Analyst, Responsible Investment
Council for Aboriginal Alcohol Programs Aboriginal Corporation	Elizabeth Stubbs	Deputy CEO
	Jill Smith	CEO
Danila Dilba Health Service	Dr Andrew Webster	Head of Clinical Governance and General Practitioner
	Carol Stanislaus	Chairperson
	Malcolm Laughton	Mobile Clinic Team Leader
	Olga Havnen	CEO
	Shannon Daly	Deputy Chairperson
	Joy Mclaughlin	Senior Officer, Strategy, Research & Policy
Darwin community members	Approximately 20 general community members	
	Tracey Hayes	Former Chairperson, Darwin Waterfront Corporation Board
	Bill Risk	Senior Larrakia Elder, who spoke to the panel in his personal capacity, former and current member of a number of Indigenous boards and committees including the Larrakia Nation Aboriginal Corporation
	Lesley Alford	Community member
Endeavour Group	Steve Donohue	Managing Director
	A number of senior managers from Endeavour	
Foundation for Alcohol Research and Education (FARE)	Caterina Giorgi	CEO
From the Heart	Dean Parkin	Director
Gwalwa Daraniki Association	Helen Secretary	Chairperson
	Steve Doherty	Consultant Secretary
	Approximately 6 community members	
HESTA	Claire Heeps	Senior Responsible Investment Adviser

Organisation	Name	Position
IFM Investors	Chris Newton	Executive Director, Responsible Investment
	Clare Baldwin	Senior Associate, Responsible Investment
	Stephanie Strange	Graduate, Responsible Investment
Indigenous Allied Health Australia	Kylie Stothers	Director of Workforce Development
	Paul Gibson	Director of Policy and Research
Ironbark Aboriginal Corporation	Shaun Pearce	CEO (Note: Mr Pearce is also the Vice President of the Northern Territory Chamber of Commerce)
Larrakia Nation Aboriginal Corporation	Nelson Tinoco	Outreach Manager
	Richard Fejo	Chairperson
	Robert Cooper	CEO
Legislative Assembly of the Northern Territory	Gerard Maley	Deputy Leader of the Opposition, Member for Nelson
	Mark Monaghan	Member for Fong Lim
	Patrick Moran	Policy Adviser, Office of the Leader of the Opposition
Local Government Association of the Northern Territory	Sean Holden	CEO
Local Government Super	Venn Purnell	Administrator, Responsible Investment
Location IQ	Gavin Duane	Director
Lowitja Institute	Pat Anderson AO	Chairperson
Maritime Union of Australia	Thomas Mayor	National Indigenous Officer and NT Branch Deputy Secretary
Media Super	Michael McQueen	CIO
Menzies School of Health Research	Professor Alan Cass AO	Director
	Dr Cassandra Wright	NHMRC Early Career Research Fellow
	Professor James Smith	Researcher (Father Frank Flynn Fellow)
	Dr Peter d'Abbs	Researcher (Honorary Fellow)
MGA Town Planners	Jeffrey Malcolm	Town Planner
National Aboriginal Community Controlled Health Organisation (NACCHO)	Pat Turner AM	CEO
National Indigenous Australians Agency	Sam Jeffries	Group Manager for Central Australia
NGS Super	Helen Hall	Senior Manager - Investor Governance

APPENDICES

Organisation	Name	Position
NO MORE Campaign	Charlie King	Founder
North Australian Aboriginal Justice Agency	Priscilla Atkins	CEO
	David Woodroffe	Principal Legal Officer
Northern Land Council	Bob Gosford	Manager, Policy & Communications
	Marion Scrymgour	CEO
	Peter Wellings	Executive Officer to CEO & Chair
Northern Territory Business Council	Kevin Peters	Chairman
Northern Territory Chamber of Commerce	Greg Ireland	CEO
	Karen Sheldon AM	President
Northern Territory Council of Social Service (NTCOSS)	Deborah Di Natale	CEO
Northern Territory Department of Infrastructure, Planning and Logistics	Bruce Michael	Executive Director, Transport Planning
Northern Territory Department of Industry, Tourism and Trade	Andrea Allen	Senior Director
	Doug Bell	Project Officer
	Philip Timney	Director of Liquor Licensing
Northern Territory Liquor Commission	Richard Coates	Chairperson
Northern Territory Police	Antony Deutrom APM	Superintendent (formerly Acting Commander)
Parliament of Australia	Kris Civitarese	Office Manager, Office of Senator Dr Sam McMahon
	Senator Patrick Dodson	Senator for Western Australia
	Senator Dr Sam McMahon	Senator for the Northern Territory
	The Hon. Warren Snowdon MP	Federal Member for Lingiari
Phoenix Consulting	Damien Howard	Psychologist and Cross Cultural Mentor
Public Health Association of Australia	Dr Rosalie Schultz	Vice President, Northern Territory Branch
	Associate Professor Suzanne Belton	President, Northern Territory Branch
Reconciliation Australia	Karen Mundine	CEO
	Kate Delaney	Reconciliation Action Plan Program Manager, Accreditation and Evaluation
	Peter Morris	General Manager, Reconciliation Action Plan program

Organisation	Name	Position
Save the Children Australia	Noelene Swanson	State Director, Northern Territory and Western Australia
	Travis Borsi	Program Manager
King & Wood Mallesons	Carl Black	Partner
State Super	John Livanas	CEO
	Jennifer Surjadi	Manager - Responsible Investment
The Youth Mill	Margaret Lim	Founder
Thomas Chin Pty Ltd	Darryl Thomas	Director and Fine Wine Specialist
TWU Superannuation Fund	Geraldine Goh	Analyst - Responsible Investment
UniSuper	Sybil Dixon	Senior Investment Analyst
University of Melbourne	Professor Marcia Langton AM	Foundation Chair of Australian Indigenous Studies, Associate Provost
University of Newcastle	Professor Roberta Ryan	Professor of Local Government
University of New South Wales	Professor Megan Davis	Pro Vice-Chancellor Indigenous and Professor of Law
Victorian Funds Management Corporation (VFMC)	Priya Patel	Manager, ESG
Woolworths Group	Gordon Cairns	Chairman
	Brad Banducci	Managing Director and Chief Executive Officer
	Holly Kramer	Non-executive Director
	Kathee Tesija	Non-executive Director
	Michael Ullmer AO	Non-executive Director
	Christian Bennett	Group Head of Reputation
	A number of senior managers from Woolworths Group	
Woolworths Group External Indigenous Advisory Panel	Adam Goodes	Member
	Kristal Kinsela	Member

Appendix B - Panel Member Biographies



Danny Gilbert AM *(Panel Chair)*

Co-founder and Managing Partner of Gilbert + Tobin

Danny Gilbert AM is co-founder and Managing Partner of Gilbert + Tobin. In his role as co-founder and Managing Partner of Gilbert + Tobin, Danny has been the recipient of several awards, including the Lawyers Weekly Australian Law Awards Managing Partner of the Year 2018 and the 2017 Financial Times Asia-Pacific Innovative Lawyers first ever Special Achievement Award for his extraordinary contribution to law and commitment to innovation. In 2019, Danny was awarded the degree of Doctor of Laws, honoris causa, by the University of New South Wales.

Danny is currently Director, Business Council of Australia; Co-Chair Cape York Partnership Group Pty Limited and, until recently, a member of the Social Impact Investing Taskforce Expert Panel, Department of the Prime Minister and Cabinet.



Nigel Browne *(Panel member)*

Former Crown Prosecutor and Chief Executive Officer of the Larrakia Development Corporation

Nigel is a Larrakia and Wulna man. He is the Chief Executive Officer of the Larrakia Development Corporation, having served as a Director on the board from 2006 and as Chair from 2010 to 2013. Nigel studied at Northern Territory University where he graduated with a Bachelor of Laws in 2001.

Previous professional roles include Crown Prosecutor (ODPPNT), Aboriginal Lands (SFNT), and Policy Adviser (Chief Minister's Office). Nigel has held board positions with the North Australian Aboriginal Justice Agency, Law Society (NT) and various other government and industry boards and committees. He is a member of the Aboriginal Tourism Committee (Tourism NT), the Territory Economic Reconstruction Commission (TERC), the Northern Australia Indigenous Reference Group (NIAA) and Chair of the Australia Day Council (NT).

In August 2011 Nigel was announced as the National Indigenous Legal Professional of the Year in recognition of his advocacy, representation, and contribution to Larrakia people. He is also a member of the Australian Institute of Company Directors.



Heather D'Antoine *(Panel member)*

Honorary Fellow with Menzies School of Health Research

Heather D'Antoine is a Bardi woman and Honorary Fellow at the Menzies School of Health Research. Heather has 25 years of experience in health services as a registered nurse and midwife and as a health service manager in both Aboriginal health services and general health services across Western Australia. In the last 12 years, Heather has worked in health research: eight years at the Institute for Child Health Research and two years at the Menzies School of Health Research. She has clinical qualifications in general nursing and midwifery and academic qualifications in health economics. Heather's research interest is in maternal and child health. She is particularly focused on the area of fetal alcohol spectrum disorders (FASD) and other birth defects.



Roland Houareau *(Panel member)*

General Manager Northern Territory, INPEX Australia

Roland Houareau is the General Manager, Northern Territory at INPEX and has worked in the resources industry since the mid-1990s. Roland is a current Fellow of the Chartered Institute of Personnel and Development in the United Kingdom (CIPD), a Fellow of the Australian Human Resources Institute (AHRI) and INSEAD Alumni having completed programs in both Singapore and France. Roland is also a non-executive Director for the Chamber of Commerce Northern Territory board where he also holds the role of Vice President Finance, Audit and Risk. Roland is also a Director on the Northern Territory Board of Studies and Graduate of the Australian Institute of Company Directors (AICD).



Neil Westbury PSM *(Panel member)*

Former Commonwealth Public Servant and Director of the Indigenous Land Corporation

Neil Westbury has worked in Indigenous affairs since the early 1970s in the Northern Territory, Western Australia, Victoria and the ACT. He is a former Assistant Secretary in the Department of Prime Minister and Cabinet, Deputy CEO of the Office of Northern Development, General Manager of Reconciliation Australia, Executive Director NT Office Of Indigenous Policy and Director on the Indigenous Land Corporation. He is currently Chair of the Machado Joseph Disease Foundation and a Director of Victorian Traditional Owners Funds Limited.

